Senate bill No. 383, A bill to be entitled "An Act to amend Chapter 34 of the Special Laws of the Regular Session of the Thirty-second Legislature, being 'An Act to amend Chapter 80, Special Laws passed by the Regular Session of the Thirtieth Legislature of the State of Texas,' approved April 15, 1907, and declaring an emergency,"

And find the same correctly engrossed.

BRELSFORD, Chairman.

Committee Room,
Austin, Texas, March 3, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Engrossed Bills have carefully examined and compared

Senate bill No. 249, A bill to be entitled "An Act granting to the Guadalupe Water Power Company, now proposing to construct five (5) dams across the Guadalupe river, in Guadalupe county, Texas, and declaring an emergency,"

And find the same correctly engrossed.

BRELSFORD, Chairman.

## PETITIONS AND MEMORIALS.

By Senator McNealus:

Memorial signed numerously by the citizens of Gilmer, Texas, setting forth the need of an orphan asylum for colored children and requesting the Legislature to create same by proper enactment and establish the institution at Gilmer.

By Senators Warren, Greer, Darwin, Brelsford, Vaughan, Cowell, Nugent, Collins, Conner and Taylor:

Numerous petitions and telegrams signed numerously by citizens of Texas endorsing the Katy consolidation bill and asking that same be passed over Governor's veto.

By Senators Bailey and Real:

Numerous petitions from Houston and Galveston requesting enactment of House bill No. 162 or Senate bill by Real and others transferring the custody of the Alamo property to the Daughters of the Republic of Texas.

By Lieutenant Governor Mayes:

Telegram from B. Youngblood stating that Congress had finally consigned Ft. Brown to Texas, and that it was "up" to Texas to say whether or not money will be appropriated for an experimental station there.

By Senator Hudspeth:

Petition signed numerously by members of Texas Historical Landmarks Association, asking that the old main building of the Alamo fort be restored and that competent custodians be placed in charge and under the supervision of the State.

By Lieutenant Governor Mayes:

Copy of resolutions passed by Tom Green county Lodge No. 159, F. E. & C. U. endorsing the petitioning of the Legislature to vote liberal appropriations to the Agricultural and Mechanical College; also statement to the effect that 2,963 citizens of various Texas communities had signed petitions requesting such appropriations, said statement being signed by officers of Tom Green County Union.

## THIRTY-EIGHTH DAY.

Senate Chamber,
Austin, Texas,
Tuesday, March 4, 1913.

The Senate met pursuant to adjournment and was called to order by Lieutenant Governor Will H. Mayes.

Roll call, a quorum being present, the following Senators answering to their names:

| | |
|---|---|
| Astin. | Morrow. |
| Bailey. | Murray. |
| Brelsford. | Nugent. |
| Carter. | Paulus. |
| Collins. | Real. |
| Conner. | Taylor. |
| Cowell. | Terrell. |
| Darwin. | Townsend. |
| Gibson. | Vaughan. |
| Greer. | Warren. |
| Hudspeth. | Watson. |
| Johnson. | Weinert. |
| Kauffman. | Westbrook. |
| Lattimore. | Wiley. |
| McGregor. | Willacy. |
| McNealus. | |

Prayer by the Chaplain, Rev. H. M. Sears.

Pending further reading of the Journal of yesterday, on motion of Senator Darwin, the same was dispensed with.

## EXCUSED.

On account of important business:

Senator Kauffman, for non-attendance

on yesterday, on motion of Senator Lattimore.

Senator McGregor, for non-attendance on yesterday, on motion of Senator Vaughan.

## BILLS AND RESOLUTIONS.

By Senator Johnson:

Senate bill No. 404, A bill to be entitled "An Act to provide for a high school to be located at Hale Center, in Hale county, Texas, and giving its boundaries and defining the duties and privileges of same, and giving authority to levy taxes to maintain said high school, and declaring an emergency."

Read first time and referred to Committee on Educational Affairs.

By Senator Nugent:

Senate bill No. 405, A bill to be entitled "An Act to amend Article 2425 of Title 44, Chapter 1, of the Revised Civil Statutes of 1911, adopted by the Thirty-second Legislature, providing that drainage and levy bonds issued under the provisions of law may be deposited with State depositories on equal dignity with United States, State, county, independent school district and municipal bonds, as now provided in said Title 44, Chapter 1; repealing all laws in conflict herewith, and declaring an emergency."

Read first time and referred to Committee on State Affairs.

## SIMPLE RESOLUTION.

By Senator Townsend:

Whereas, The Attorney General, Hon. B. F. Looney, in compliance with a request of the Senate, heretofore made of him, has rendered an opinion to this body, bearing upon the proposed consolidation bills of the St. Louis Southwestern Railway Company of Texas, which said opinion is now in the hands of the presiding officer of this body; therefore, be it

Resolved by the Senate, That said opinion be and the same is hereby directed to be printed in the Journal, without first having same read, for the information of the Senate, and to thereby provide a permanent record of same.

The resolution was read and adopted.

(See Appendix for the opinion of Attorney General referred to.)

Morning call concluded.

## FIRST HOUSE MESSAGE.

Hall of the House of Representatives,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: I am directed by the House to inform the Senate that House bill No. 29 has been delivered to the Secretary of State, and I herewith hand you duplicate receipt for same.

Respectfully,
W. R. LONG,
Chief Clerk, House of Representatives.

Department of State,
Austin, Texas, March 4, 1913.

Received of W. R. Long, Chief Clerk of the House of Representatives of the Thirty-third Legislature, House bill No. 29, being an act authorizing the consolidation of the Missouri, Kansas & Texas Railway Company of Texas with other lines named in said bill.

JOHN L. WORTHAM,
Secretary of State.

## HOUSE BILL NO. 162.

(Pending Business.)

The Chair laid before the Senate, as the pending business, House bill No. 162, the same being what is known as the Alamo bill.

Action recurred on the pending amendment by Senator Hudspeth (see proceedings of yesterday for the amendment).

Senator Nugent offered the following substitute for the amendment:

Amend the bill by striking out Article 6394 and substituting in lieu thereof the following:

Article 6394. The part of the Alamo Mission property purchased by the State adjoining the building known as the Alamo church or chapel, together with the Alamo church or chapel shall be in the custody of a commission to be composed of five persons to be hereafter known as the "Alamo Commission," and which commission shall be composed of the Governor, the Attorney General, and the Superintendent of Public Buildings and Grounds, and in addition thereto two ladies to be selected as hereinafter provided.

The Governor, Attorney General and Superintendent of Public Buildings and

Grounds shall by a majority of said members select one lady who shall be a member of the patriotic organization known as the De Zavalla Chapter Daughters of the Republic, and one lady who shall be a member of the patriotic organization known as the Daughters of the Republic of Texas, which two ladies, together with the said three other members hereinbefore provided for shall constitute said Alamo Commission. The term of office of the two lady members of said commission shall be two years, beginning on the day this law goes into effect; provided, that one of the lady members first chosen shall serve only one year, and that the first two chosen shall draw for the short and long term, and that thereafter one lady member shall be chosen each year.

Said Alamo Mission and church or chapel property, together with the former Hugo-Schmeltzer property now owned by the State, shall be restored, and thereafter preserved and maintained as nearly as it may be possible to do so, to its condition and appearance at the time of the massacre of the Texans in what is known as "The Battle of the Alamo."

The work of restoring and preserving said property shall be under the immediate direction, management, supervision and control of the three members of said commission composed of the Superintendent of Public Grounds and the two lady members hereinbefore provided for, a majority of said three members to govern in the direction, management, supervision and control; provided, that in the event that a majority of said three members cannot harmonize and agree upon any plans or details of such work, then and in that event such differences and unsettled questions shall be referred to the whole commission, the action of a majority of whom shall in all cases control.

The sum of ten thousand dollars is hereby appropriated out of any funds not otherwise appropriated out of the general revenue to carry out the provisions of this act.

NUGENT,
WARREN.

Senator Warren moved that further consideration of the bill be postponed until such a time as the Senate should receive a message from the Governor on this subject, it being stated that the Governor was preparing a special message.

The motion to postpone subject to call was lost by the following vote:

Yeas—8.

| | |
|---|---|
| Astin. | Morrow. |
| Brelsford. | Nugent. |
| Carter. | Warren. |
| Greer. | Wiley. |

Nays—21.

| | |
|---|---|
| Bailey. | Murray. |
| Collins. | Paulus. |
| Cowell. | Real. |
| Darwin. | Taylor. |
| Gibson. | Townsend. |
| Hudspeth. | Vaughan. |
| Johnson. | Watson. |
| Kauffman. | Weinert. |
| Lattimore. | Westbrook. |
| McGregor. | Willacy. |
| McNealus. | |

Present—Not Voting.

Conner.

Absent.

Terrell.

Action then recurred on the substitute amendment by Senator Nugent.

## RECESS.

On motion of Senator McNealus the Senate, at 12:30 o'clock p. m., recessed until 2:30 o'clock today.

## AFTER RECESS.

(Afternoon Session.)

The Senate was called to order by Lieutenant Governor Mayes.

## HOUSE BILL NO. 162.

Action recurred on the pending business, House bill No. 162, the question being on the substitute amendment by Senator Nugent for the amendment by Senator Hudspeth.

Pending discussion Senator Conner offered an amendment to the substitute, and Senator Hudspeth made the point of order that an amendment to the substitute was not in order until after the action on the substitute.

The Chair sustained the point of order.

Pending further discussion the Chair stated that he would reverse his ruling,

having looked up the precedence, and would hold that the amendment to the substitute was in order.

The amendment is as follows:

Amend the substitute by striking out all of the first paragraph from and including the words "the Governor" down to and including the words, "each year," in the second paragraph, and insert in lieu thereof the following: "Three citizens of Texas who shall not during their term of office hold any other public office and two ladies, one from the Daughters of the Republic and the other from the De Zavalla Chapter of the Daughters of the Republic, and to be known as the Alamo Commission. Said commissioners to be appointed by the Governor by and with the advice of the Senate, who shall hold their offices for the term of two years. The term of the first commissioners appointed herein to begin March 2, 1913."

CONNER.

Senator Nugent moved to table the amendment to the substitute.

Senator Townsend moved the previous question on the pending amendments and the bill, which motion was duly seconded. The Senate refused to order the main question by the following vote:

Yeas—5.

| | |
|---|---|
| Bailey. | Westbrook. |
| Collins. | Willacy. |
| Johnson. | |

Nays—25

| | |
|---|---|
| Astin. | Morrow. |
| Brelsford. | Murray. |
| Carter. | Nugent. |
| Conner. | Paulus. |
| Cowell. | Real. |
| Darwin. | Taylor. |
| Gibson. | Townsend. |
| Greer. | Vaughan. |
| Hudspeth. | Warren. |
| Kauffman. | Watson. |
| Lattimore. | Weinert. |
| McGregor. | Wiley. |
| McNealus. | |

Absent.

Terrell.

The motion to table the amendment to the substitute was withdrawn.

Pending further discussion, Senator Hudspeth moved to table the amendment to the substitute, and on that motion moved the previous question on the pending amendments and the bill, which motion, being duly seconded, was so ordered.

The motion to table the amendment to the substitute was adopted by the following vote:

Yeas—25.

| | |
|---|---|
| Astin. | Nugent. |
| Bailey. | Paulus. |
| Carter. | Real. |
| Collins. | Taylor. |
| Darwin. | Terrell. |
| Gibson. | Townsend. |
| Greer. | Vaughan. |
| Hudspeth. | Warren. |
| Kauffman. | Watson. |
| McGregor. | Weinert. |
| McNealus. | Wiley. |
| Morrow. | Willacy. |
| Murray. | |

Nays—6.

| | |
|---|---|
| Brelsford. | Johnson. |
| Conner. | Lattimore. |
| Cowell. | Westbrook. |

Action then recurred on the substitute amendment and the same was adopted by the following vote:

Yeas—19.

| | |
|---|---|
| Astin. | Morrow. |
| Brelsford. | Murray. |
| Carter. | Nugent. |
| Collins. | Paulus. |
| Conner. | Townsend. |
| Gibson. | Warren. |
| Greer. | Watson. |
| Hudspeth. | Weinert. |
| Kauffman. | Wiley. |
| McNealus. | |

Nays—12.

| | |
|---|---|
| Bailey. | Real. |
| Cowell. | Taylor. |
| Darwin. | Terrell. |
| Johnson. | Vaughan. |
| Lattimore. | Westbrook. |
| McGregor. | Willacy. |

The amendment, as substituted, was then adopted by the following vote:

Yeas—20.

| | |
|---|---|
| Astin. | Morrow. |
| Brelsford. | Murray. |
| Carter. | Nugent. |
| Collins. | Paulus. |
| Conner. | Terrell. |
| Gibson. | Townsend. |
| Greer. | Warren. |
| Hudspeth. | Watson. |
| Kauffman. | Weinert. |
| McNealus. | Wiley. |

Nays—11.

| | |
|---|---|
| Bailey. | Cowell. |

| | |
|---|---|
| Darwin. | Taylor. |
| Johnson. | Vaughan. |
| Lattimore. | Westbrook. |
| McGregor. | Willacy. |
| Real. | |

The bill, having already been read, was passed to a third reading.

Senator Hudspeth moved to reconsider the vote by which the bill was passed to engrossment and lay that motion on the table.

The motion to table prevailed.

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## HOUSE BILL NO. 355 RE-REFERRED.

On motion of Senator Johnson, House bill No. 355 was withdrawn from Committee on Counties and County Boundaries and referred to Committee on Public Health.

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## RECESS.

On motion of Senator Lattimore, the Senate recessed until 8 o'clock tonight.

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## AFTER RECESS.

(Night Session.)

The Senate was called to order by Lieutenant Governor Mayes.

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## ORDER OF BUSINESS FOR NIGHT SESSION.

Senator Watson moved that the roll of the Senate be called and that each Senator be allowed to call up a bill that there was no objection to, and Senator Carter amended the motion providing that if there was objection to the bill, that the Senator calling up same be allowed to move to suspend the regular order of business for the purpose of taking up the bill out of its order.

The motion, as amended, was adopted.

---

## SENATE BILL NO. 298.

(By Senator Bailey.)

The Chair laid before the Senate, on second reading,

Senate bill No. 298, A bill to be entitled "An Act authorizing cities situated along or on navigable streams, and acting under special charters, to extend by ordinance their boundaries so as to include in said cities the navigable stream and the land lying on both sides thereof for a distance of twenty-five hundred feet from the thread of the stream to a distance of twenty miles or less in an air line from the ordinary boundaries of said city either above or below the boundaries of said city or both; and granting to said cities within said added territory the right to purchase or condemn property for navigation or wharfage or for aids or facilities to either; and granting to said city within said territory full power of regulation and control over navigation and wharfage, and over all facilities and aids to either; and full power to pass and enforce ordinances for the police of navigation and wharfage, and of all aids and facilities to either, and declaring an emergency."

Senator Collins offered the following amendment, which was read and adopted:

Amend the bill as follows: After Section 1, strike out the period and add a comma, and add the following language: "provided in all condemnation proceedings under this act the same procedure shall apply that now applies in the condemnation of land by cities for the purposes of streets."

Senator Collins offered the following amendment, which was read and adopted:

Amend the bill as follows: After Section 2, strike out the period, and insert a comma, and add the following language: "or any land at the time belonging to any other city or town."

Senator Wiley offered the following amendment:

Amend the bill, page 1, line 29, by striking out the word "twenty-five hundred feet" and insert the words "five hundred feet."

Senator Nugent moved to table the amendment, which motion to table was adopted.

The bill was read second time and ordered engrossed.

On motion of Senator Bailey, the constitutional rule requiring bills to be read on three several days was suspended and the bill put on its third reading and final passage by the following vote:

Yeas—25.

| | |
|---|---|
| Bailey. | Greer. |
| Carter. | Johnson. |
| Collins. | Kauffman. |
| Conner. | Lattimore. |
| Cowell. | McGregor. |
| Darwin. | McNealus. |
| Gibson. | Morrow. |

| | |
|---|---|
| Nugent. | Warren. |
| Paulus. | Watson. |
| Real. | Weinert. |
| Taylor. | Westbrook. |
| Townsend. | Wiley. |
| Vaughan. | |

Absent.

| | |
|---|---|
| Astin. | Murray. |
| Brelsford. | Terrell. |
| Hudspeth. | Willacy. |

The bill was read third time and passed by the following vote:

Yeas—23.

| | |
|---|---|
| Bailey. | Morrow. |
| Carter. | Nugent. |
| Collins. | Paulus. |
| Conner. | Real. |
| Cowell. | Taylor. |
| Gibson. | Terrell. |
| Greer. | Townsend. |
| Johnson. | Warren. |
| Kauffman. | Watson. |
| Lattimore. | Westbrook. |
| McGregor. | Willacy. |
| McNealus. | |

Nays—1.

Wiley.

Absent.

| | |
|---|---|
| Astin. | Murray. |
| Brelsford. | Vaughan. |
| Darwin. | Weinert. |
| Hudspeth. | |

Senator Bailey moved to reconsider the vote by which the bill was passed and lay that motion on the table.

The motion to table prevailed.

## SECOND HOUSE MESSAGE.

Hall of the House of Representatives,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has passed the following bill:

Senate bill No. 253, creating the Clifton Independent School District, with amendments.

Respectfully,
W. R. LONG,
Chief Clerk, House of Representatives.

## SENATE BILL NO. 137.

(By Senator Carter.)

The Chair laid before the Senate, on second reading,

Senate bill No. 137, A bill to be entitled "An Act defining the offense of assault with a prohibited weapon, prescribing the punishment therefor, and declaring an emergency."

The committee report, with (committee) amendment, was read, and Senator Lattimore offered the following amendment to the committee report, which was read and adopted:

Amend committee report, page 2 of printed bill, by striking out the word "made" after the word "or" in line 10, and insert in lieu thereof the following: "mode of," after the second word "or."

The committee report, as mended, was adopted.

Senator Townsend offered the following amendment, which was read and adopted:

Amend the bill on page 1, line 11, by adding after the word "shall" the word "wilfully."

Senator Watson offered the following amendment:

Amend the bill by striking out all after the word "by" in line 18, page 1, and insert in lieu thereof the following: "a fine not to exceed five hundred dollars or by imprisonment in the county jail not to exceed six months."

Senator Morrow offered the following substitute for the amendment:

Amend the bill by striking out in line 18, page 1, all after the word "by" and inserting the following: "fine of not less than $250 and not more than $500, or by confinement in the penitentiary for not less than one year and not more than two years, or by both such fine and imprisonment."

Senator Carter moved to table the substitute for the amendment, which motion to table was adopted by the following vote:

Yeas—19.

| | |
|---|---|
| Astin. | McNealus. |
| Carter. | Real. |
| Collins. | Taylor. |
| Cowell. | Terrell. |
| Gibson. | Townsend. |
| Greer. | Vaughan. |
| Johnson. | Warren. |
| Kauffman. | Westbrook. |
| Lattimore. | Wiley. |
| McGregor. | |

Nays—7.

| | |
|---|---|
| Conner. | Paulus. |
| Darwin. | Watson. |
| Morrow. | Willacy. |
| Nugent. | |

Present—Not Voting.

Bailey.

Absent.

Brelsford. Murray.
Hudspeth. Weinert.

Senator Watson offered the following substitute for the pending amendment:

Amend the bill by striking out all after the word, "by," in line 18, page 1, down to and including all of line 19, and insert in lieu thereof the following: "a fine not to exceed two thousand dollars, or by imprisonment in the county jail not to exceed two years."

Senator Vaughan offered the following amendment to the substitute:

Amend the substitute by adding after the last word in same the words: "or by confinement in the penitentiary for not more than five years."

Senator Vaughan moved the previous question on the pending amendments, which motion being duly seconded was so ordered.

The amendment to the substitute was adopted.

The substitute, as amended, was adopted, and the amendment as substituted was adopted

The bill was read second time and ordered engrossed.

On motion of Senator Carter, the constitutional rule requiring bills to be read on three several days was suspended and the bill put on its third reading and final passage by the following vote:

Yeas—24.

Astin. Morrow.
Carter. Nugent.
Collins. Paulus.
Conner. Real.
Cowell. Taylor.
Gibson. Terrell.
Greer. Townsend.
Johnson. Vaughan.
Kauffman. Warren.
Lattimore. Westbrook.
McGregor. Wiley.
McNealus. Willacy.

Nays—1.

Watson.

Absent.

Bailey. Hudspeth.
Brelsford. Murray.
Darwin. Weinert.

The bill was read third time and passed by the following vote:

Yeas—25.

Astin. Nugent.
Carter. Paulus.
Collins. Real.
Conner. Taylor.
Cowell. Terrell.
Gibson. Townsend.
Greer. Vaughan.
Johnson. Warren.
Kauffman. Watson.
Lattimore. Westbrook.
McGregor. Wiley.
McNealus. Willacy.
Morrow.

Absent.

Bailey. Hudspeth.
Brelsford. Murray.
Darwin. Weinert.

Senator Carter moved to reconsider the vote by which the bill was passed and lay that motion on the table.

The motion to table prevailed.

---

## SENATE BILL NO. 63.

(By Senator Collins.)

The Chair laid before the Senate, on second reading,

Senate bill No. 63, A bill to be entitled "An Act to amend Section 9, Chapter 30, of the General Laws of the State of Texas, passed by the Thirty-first Legislature (1909), at the Regular Session, approved April 21, 1909, relating to the Texas State Board of Health, Vital Statistics, and to add to said Chapter, Section 10a; establishing charbon districts; providing that persons residing therein shall report all animals suffering with charbon or supposed to have such disease to the county health officer, who shall report same to the State Board of Health, and providing for practicing physicians to report all persons suffering with said disease; and providing for the employment of a chemist and bacteriologist where charbon is prevalent, for the purpose of combating with said disease; and providing for the State Board of Health or one who is under them, to visit all stock reported to have charbon; and providing for the isolation of same and for the isolation of all stock exposed to said disease and authority to destroy infected stock and providing for the destruction of the carcasses of stock dying from charbon, or supposed to have died from same, and prohibiting certain stock from running at large between the first day of May and the first day of October in any

county where charbon is prevalent or where same may become prevalent; and providing for the prohibiting of such stock in counties and subdivisions thereof where charbon is prevalent, or where same may become prevalent, from running at large in such counties or subdivisions thereof, to be determined by election by the qualified voters of such counties, providing the manner of holding such elections, regulating the terms and conditions thereof, and the carrying into effect of such elections so to be held; and providing adequate penalties for enforcing such law, and repealing all laws and parts of laws in conflict therewith, and declaring an emergency."

Senator Collins offered the following several amendments, offering them separately, and each were adopted on separate motions:

Amend the caption as follows: In line 17, page 1, strike out the words "chemist and."

Amend the caption as follows: In line 24, page 1, after the word "same" strike out all down to and including the word "prevalent" in line 27 on same page.

Amend the bill as follows: In line 28, page 1, after the word "stock" insert a comma.

Amend the bill as follows: In line 26, page 2, after the word "section," the letter "s," and thereafter the word "10a," add the following: "10b, 10c, 10d, 10e, 10f, 10g, 10h, 10i, 10j and 10k."

Amend the bill as follows: Beginning at the words "Section 1," top of page 3, strike out the figure "1" and insert the word "10b," and follow each following section by striking out the figure after the word "Sec." and insert the figure "10" followed by the alphabet corresponding in number with the figure stricken out.

Amend the bill as follows: In line 12, page 2, strike out all after the word "citizens" down to and including the word "hogs" in line 13 same page, and in line 15 page 2, strike out the words "and live stock."

Amend the bill as follows: In line 31, page 6, strike out the figures "$10.00," and insert the following: "($5.00) five dollars," and in line 32, page 6, strike out the figures "$100.00," and insert the following "($50.00) fifty dollars."

The bill having already been read second time, was ordered engrossed.

On motion of Senator Collins, the constitutional rule requiring bills to be read on three several days was suspended and the bill put on its third reading and final passage by the following vote:

Yeas—24.

| | |
|---|---|
| Astin. | Morrow. |
| Bailey. | Nugent. |
| Carter. | Paulus. |
| Collins. | Real. |
| Conner. | Taylor. |
| Cowell. | Terrell. |
| Greer. | Townsend. |
| Johnson. | Vaughan. |
| Kauffman. | Warren. |
| Lattimore. | Watson. |
| McGregor. | Westbrook. |
| McNealus. | Wiley. |

Absent.

| | |
|---|---|
| Brelsford. | Murray. |
| Darwin. | Weinert. |
| Gibson. | Willacy. |
| Hudspeth. | |

The bill was read third time and Senator Collins offered the following amendment:

Amend the bill as follows: After the word "10a" add in line 11, page 1: "10b, 10c, 10d, 10e, 10f, 10g, 10h, 10i, 10j, 10k."

The amendment was read and adopted by the following vote:

Yeas—24.

| | |
|---|---|
| Astin. | Morrow. |
| Bailey. | Nugent. |
| Carter. | Paulus. |
| Collins. | Real. |
| Conner. | Taylor. |
| Cowell. | Terrell. |
| Greer. | Townsend. |
| Johnson. | Vaughan. |
| Kauffman. | Warren. |
| Lattimore. | Watson. |
| McGregor. | Westbrook. |
| McNealus. | Wiley. |

Absent.

| | |
|---|---|
| Brelsford. | Murray. |
| Darwin. | Weinert. |
| Gibson. | Willacy. |
| Hudspeth. | |

The bill was read third time and passed by the following vote:

Yeas—24.

| | |
|---|---|
| Astin. | Lattimore. |
| Bailey. | McGregor. |
| Carter. | McNealus. |
| Collins. | Morrow. |
| Conner. | Nugent. |
| Cowell. | Paulus. |
| Greer. | Real. |
| Johnson. | Taylor. |
| Kauffman. | Terrell. |

| | |
|---|---|
| Townsend. | Watson. |
| Vaughan. | Westbrook. |
| Warren. | Wiley. |

Absent.

| | |
|---|---|
| Brelsford. | Murray. |
| Darwin. | Weinert. |
| Gibson. | Willacy. |
| Hudspeth. | |

Senator Collins moved to reconsider the vote by which the bill was passed and lay that motion on the table.

The motion to table prevailed.

---

SENATE BILL NO. 202.

On motion of Senator Townsend, the regular order of business was suspended, and the Senate took up, out of its order, Senate bill No. 202, by the following vote:

Yeas—22.

| | |
|---|---|
| Astin. | Morrow. |
| Bailey. | Nugent. |
| Carter. | Paulus. |
| Collins. | Real. |
| Conner. | Taylor. |
| Cowell. | Terrell. |
| Greer. | Townsend. |
| Johnson. | Vaughan. |
| Kauffman. | Warren. |
| McGregor. | Westbrook. |
| McNealus. | Wiley. |

Nays—2.

| | |
|---|---|
| Lattimore. | Watson. |

Absent.

| | |
|---|---|
| Brelsford. | Murray. |
| Darwin. | Weinert. |
| Gibson. | Willacy. |
| Hudspeth. | [redacted] |

The Chair laid before the Senate, on second reading,

Senate bill No. 202, A bill to be entitled "An Act to provide for an agricultural exhibit at the Panama-Pacific Exposition, making an appropriation therefor, and declaring an emergency."

Action recurred on the pending amendment and the substitute therefor. (See proceedings of February 21 for the amendment and the substitute.)

Action recurred on the substitute and the same was adopted.

The amendment, as substituted, was adopted.

Senator Astin offered the following amendment:

Amend the caption of the bill as follows: Line 7, page 1, by striking out the word "on" and insert in lieu thereof the words "a State," and strike out the word "at" after the word "exhibit" in said line and insert in lieu thereof "which may be transferred to."

Senator Astin offered the following amendment, which was read and adopted:

Amend the bill as follows: Line 14, page 1, by striking out the words "to be displayed at," and insert in lieu thereof the words "which may be transferred to."

Senator Astin offered the following amendment, which was read and adopted:

Amend the bill as follows: Line 13, page 1, strike out the word "on" after the word "for" and insert in lieu thereof the words "a State" before the word "agriculture."

The bill was read second time and ordered engrossed.

On motion of Senator Astin, the constitutional rule requiring bills to be read on three several days was suspended and the bill put on its third reading and final passage by the following vote:

Yeas—19.

| | |
|---|---|
| Astin. | Nugent. |
| Bailey. | Paulus. |
| Carter. | Real. |
| Collins. | Taylor. |
| Conner. | Terrell. |
| Cowell. | Vaughan. |
| Johnson. | Warren. |
| Kauffman. | Watson. |
| McGregor. | Wiley. |
| McNealus. | |

Nays—4.

| | |
|---|---|
| Greer. | Townsend. |
| Lattimore. | Westbrook. |

Present—Not Voting.

Morrow.

Absent.

| | |
|---|---|
| Brelsford. | Murray. |
| Darwin. | Weinert. |
| Gibson. | Willacy. |
| Hudspeth. | |

The bill was read third time and passed by the following vote:

Yeas—19.

| | |
|---|---|
| Astin. | Carter. |
| Bailey. | Collins. |

| | |
|---|---|
| Conner. | Real. |
| Cowell. | Terrell. |
| Johnson. | Vaughan. |
| Kauffman. | Warren. |
| McGregor. | Watson. |
| McNealus. | Wiley. |
| Nugent. | Willacy. |
| Paulus. | |

Nays—6.

| | |
|---|---|
| Greer. | Taylor. |
| Lattimore. | Townsend. |
| Morrow. | Westbrook. |

Absent.

| | |
|---|---|
| Brelsford. | Hudspeth. |
| Darwin. | Murray. |
| Gibson. | Weinert. |

Senator Astin moved to reconsider the vote by which the bill was passed and lay that motion on the table.

The motion to table prevailed.

## REASONS FOR VOTE.

I vote "nay" because I believe the appropriation unconstitutional.

LATTIMORE.

I vote "nay" because I regard the bill as unconstitutional.

TAYLOR.

## SIMPLE RESOLUTION.

(By Unanimous Consent.)

By Senator Lattimore:

Resolved, That in each night session held hereafter, unless otherwise ordered, the Secretary of the Senate shall call the roll, beginning each night where he left off the preceding night, and each member shall be privileged as his name is called to call up a bill by unanimous consent or motion, and have same considered.

MORROW.
LATTIMORE.

The resolution was read and adopted.

## HOUSE BILL NO. 167.

(By Unanimous Consent.)

The Chair laid before the Senate, on third reading,

House bill No. 167, A bill to be entitled "An Act to authorize the Gulf, Colorado and Santa Fe Railway Company to purchase, own and operate the railroad of the Concho, San Saba and Llano Valley Railroad Company, with its franchises and appurtenances; the railroad of the Gulf and Interstate Railway Company of Texas with its franchises and appurtenances; or either or any of such railroads with its or their franchises and appurtenances; and until such purchase or purchases is or are made, to authorize lease by the Gulf, Colorado and Santa Fe Railway Company of the railroad and other properties of said other companies, or of either or any of them and to authorize the Gulf, Colorado and Santa Fe Railway Company to lease that portion of the railroad of the Pecos and Northern Texas Railway Company situated between Coleman, Texas, and Sweetwater, Texas, including the railway terminals and other property of the Pecos and Northern Texas Railway Company now or hereafter situated in said cities of Coleman and Sweetwater; and to authorize the Pecos and Northern Texas Railway Company to contract with the Gulf, Colorado and Santa Fe Railway Company for the operation by the officers of the Gulf, Colorado and Santa Fe Railroad Company of said railroad between Coleman and Sweetwater."

The bill was read third time and passed.

Senator Lattimore moved to reconsider the vote by which the bill was passed and lay that motion on the table.

The motion to table prevailed.

## ADJOURNMENT.

On motion of Senator Wiley the Senate, at 10:25 o'clock p. m., adjourned until 10 o'clock tomorrow morning.

# APPENDIX.

## BILL AND RESOLUTION SIGNED.

The Chair, Lieutenant Governor Mayes, gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read, the following bill and resolution:

Senate bill No. 22, "An Act amending Chapter 104 of the General Laws, passed by the Thirty-second Legislature, at its Regular Session, by adding at the end of Section 2, Sections 2a and 2b, prescribing additional duties for the State Inspector of Masonry, Public Buildings and Works, and providing for the ap-

pointments of assistants by him, defining their duties and fixing their compensation, and declaring an emergency."

Senate Concurrent Resolution No. 4, Providing for the donation by the State of Texas of rifles to the camps of Confederate veterans.

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## OPINION OF ATTORNEY GENERAL ON MERGER BILLS.

Attorney General's Department,
Austin, Texas, Feb. 27, 1913.

Hon. W. H. Mayes, President of the Senate, Austin, Texas.

Sir: Under date of February 25, 1913, there was transmitted to this Department a copy of a resolution theretofore adopted by the Senate which reads as follows:

Simple Resolution.

Whereas, There is now pending before this Legislature certain bills, which, if adopted and made the law of this State, will permit the St. Louis Southwestern Railway Company of Texas to consolidate its lines of railroad with the lines of railroad of the Eastern Texas Railroad Company and the Stephenville North and South Texas Railway Company, presumably separate and distinct railroad corporations and properties, and,

Whereas, It is shown by the last annual report of the St. Louis Southwestern Railway Company of Texas, now on file with the Railroad Commission of Texas, that a majority or controlling interest of its stock is owned directly by the St. Louis Southwestern Railway Company, a Missouri corporation, and

Whereas, It is shown by the last annual report of said Eastern Texas Railroad Company, now on file with the Railroad Commission of Texas, that the St. Louis Southwestern Railway Company, the Missouri corporation, owns 4535 shares of the capital stock of 4545 shares issued of said Eastern Texas Railroad Company, or 99.9 per cent thereof, and,

Whereas, It is shown by the last annual report of the said Stephenville North and South Texas Railway Company, now on file with the Railroad Commission of Texas, and that the said St. Louis Southwestern Railway Company, the Missouri corporation, is the sole owner of a majority of the stock of the said Stephenville North and South Texas Railway Company, thereby being in direct control and management of said railroad; therefore, be it

Resolved, by the Senate, That the Attorney General of this State be and he is hereby requested to furnish to this body, at the earliest possible date, his opinion in writing, covering the following subject matters:

1. Can a foreign railroad corporation legally own the majority stock of a domestic railroad corporation, thereby enabling it to assume its management and control and dictate its policies?

2. Can the Eastern Texas Railroad Company and the Stephenville North and South Texas Railway Company, domestic railroad corporations, be legally consolidated with the railroad lines of the St. Louis Southwestern Railway Company of Texas, when said last named railroad company is owned and controlled by the St. Louis Southwestern Railway Company, a Missouri corporation, within the purview of Section 6 of Article 10, of the Constitution of Texas, which reads as follows:

"No railroad company organized under the laws of this State shall consolidate by private or judicial sale or otherwise, with any railroad company organized under the laws of any other State or of the United States."

3. Are there any other constitutional objections to such consolidation?

The matter presented by the resolution for investigation, as relevant to pending legislation, involve questions of great moment both as regards the public interests and as regards the interests of those engaged in the ownership and operation of the transportation facilities of the State. This fact, together with the dignity of the request, has led us to a painstaking investigation of applicable law, and, in view of the ends reached, demands that the grounds upon which our conclusions rest be set forth at length and with particularity in order that they may be given such consideration or criticism as may be deserved.

### Facts.

Moody's Manual of Railroads and Corporation Securities shows the following facts:

The St. Louis Southwestern Railway Company was incorporated January 12, 1891, in Missouri as successor, under plan of the reorganization, to the St. Louis, Arkansas & Texas Railway Company sold under foreclosure in October, 1890. The St. Louis Southwestern Railway Company of Texas and the Tyler Southeastern Railway Company were incorporated at the same time to take

title to the property in Texas, and on October 6, 1899, the Tyler Southeastern Railway Company was formally merged in the St. Louis Southwestern Railway Company of Texas, it having previously acquired all its outstanding capital stock. In April, 1910, the St. Louis Southwestern Railway Company acquired all of the stock of the Stephenville North & South Texas Railway Company and guaranteed the payment of the first mortgage bonds of this company not to exceed $25,000 per mile.

The mileage operated by the St. Louis Southwestern Railway Company, exclusive of the Eastern Texas Railway Company and the Stephenville North & South Texas Railway Company is 1500 miles. This includes the entire mileage of the St. Louis Southwestern Railway Company of Texas.

F. H. Britton is vice president and general manager of the Missouri company and is president of the Texas company. W. N. Neff, superintendent of the Missouri company, is first vice president and general superintendent of the Texas company.

On June 30, 1911, there were bonds of the Missouri company outstanding to the amount of $48,285,407, or a total average of about $32,472 per mile of road operated, namely, 1500 miles, including the trackage of the Texas company. The fixed charges of the Missouri company (including bond interest) consumed 17.1 per cent of the gross earnings, or 61.3 per cent of the net income. The net income available for bond interest, rentals and other fixed charges after deducting taxes, amounted to $2325 per mile, and the fixed charges amounted to $1425 per mile.

The bonded indebtedness of the Texas company, including the bonds of the Tyler Southeastern Railway Company, is $15,729,500, or about $20,170 per mile. Of this amount the Missouri company owns $10,894,524. In addition to this indebtedness, 661 miles of the trackage of the Texas company is encumbered by bonds of the Missouri company, which fixes a first lien on this trackage to secure the payment of $10,105,000. The Texas company is represented as being controlled by the Missouri company through stock ownership.

All of the stock of the Eastern Texas Railway Company, amounting to $454,500, is owned by the Missouri company. This company is controlled by the Missouri company by stock ownership and it owns 30.3 miles of the track. For the year ending June 30, 1911, the total earnings of this road amounted to $70,678, operating expenses and taxes amounted to $54,558, leaving a surplus of $16,120; deductions during the year amounted to $8623, leaving a final surplus of $7498.

W. N. Neff, general superintendent of the Missouri company, first vice president and general superintendent of the Texas company, is, also, president of the Eastern Texas Railway Company.

There has been an increase of 7.4 per cent in total capitalization per mile of the Missouri company since June 30, 1901, when said figures stood at $52,925 as compared with $56,850 on June 30, 1911. There has been an increase of 15.6 per cent in total net income, excluding taxes, per mile since June 30, 1901, when said figures amounted to $2224 per mile as compared with $2573 per mile on June 30, 1911.

The Missouri company owns all of the stock of the Stephenville North & South Texas Railway Company and controls said company. F. H. Britton is president and a director of the company. W. N. Neff is a director of this company.

The above facts are shown on pages 854 to 862 of Moody's Manual of 1912.

The last annual report filed with the Railroad Commission by the St. Louis Southwestern Railway Company of Texas shows the following facts:

The capital stock of this company is divided into 25,000 shares; 24,955 shares are held by E. Francis Hyde and W. C. Pillon as trustees, the balance being deposited amongst the officers and directors of the company. The report declares that all of this stock is now, and has, continuously since the organization of the company, been owned by the St. Louis Southwestern Railway Company, a corporation organized under the laws of Missouri; the report also declares that the St. Louis Southwestern Railway Company of Texas is controlled directly and solely, without the aid of any intermediary, by the St. Louis Southwestern Railway Company. The bonds of the Tyler Southeastern Railway Company, which was consolidated with the St. Louis Southwestern Railway Company of Texas, were assumed by the latter company and are owned by the Missouri company, the interest thereon being paid by the Texas company to the Missouri company. All the equipment of the Missouri company and of the Texas company is owned jointly by the two in the proportionment of 60

per cent and 40 per cent, respectively. The bonds of the Texas company are also owned by the Missouri company.

The Missouri company and the Texas company are commonly known as the Cotton Belt Route. In the Texas and Oklahoma official railroad and hotel guide, endorsed and subscribed to by the general passenger and ticket agent of the Texas company, and in other literature, the two roads are advertised as being one system and operating two trains each way daily between Texas, Memphis, St. Louis and other points. The schedule fixed by these companies conforms to each other and shows the operation of trains Nos. 1, 3, 2 and 4 between St. Louis, Mo., and Waco, Texas, without change or interruption at the State line. The literature also represents to the public that through sleeping cars and chair cars are operated between St. Louis and Texas points. These schedules and methods of operation in a general way have been in effect continuously since the Texas company began to be operated.

The truth is to be found only when the searcher, with a right mental attitude, comes to the correct point whence to view the salient question. The Constitution means exactly the same today as it meant when first written. "The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass on it. What a court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. * * * The object of construction, as applied to a written Constitution, is to give effect to the intent of the people in adopting it."

Cooley on Constitutional Limitations.

Story on The Constitution.

As to the viewpoint, therefore, duty requires of us that we take our stand by the side of the fathers who wrought so well the fundamental law under which "we live and move and have our being," and with prophetic vision look, with their eyes, at the instant question as applied to existent fact.

The point of vantage as to view being found, what of the "mental attitude?" It is defined in the correct

I. Rule of Construction.

Mr. Story, in his Work on the Constitution, says:

"The first and fundamental rule in the interpretation of all instruments is, to construe them according to the sense of the terms and the intention of the parties. Mr. Justice Blackstone has remarked that the intention of a law is to be gathered from the words, the context, the subject matter, the effects and consequences of the reason and spirit of the law."

The applicable constitutional provisions are mandatory and must be liberally construed in favor of the State, and strictly construed as against the railway companies.

Cooley on Constitutional Limitations, p. 93.

Ency. of Law, Vol. 6, p. 621.

The rules of construction are still further narrowed when the question is the construction of grants of special privileges to corporations, the general rule being that all grants of special privilege are to be strictly construed against the grantee or the corporation and in favor of the public; that, where there is reasonable doubt as to the extent of the privileges conferred in a charter of a private corporation or by the law authorizing the grant, such doubt must be resolved against the corporation and in favor of the public; that, if the legislative intent is not ascertainable from the language used in the light of the surrounding circumstances, the doubt is to be determined in favor of the public; that, where the object is to grant franchises to corporations, the law must be strictly construed against them.

Ency. of Law, Vol. 7, p. 708.

East Line Ry. Co. vs. Rushing, 69 Texas, 314.

Morris vs. Smith Co., 88 Texas, 527.

State vs. So. Pac. Ry. Co., 24 Texas, 127.

Wharf Co. vs. G., C. & S. F. Co., 81 Texas, 494.

Victoria Co. vs. Victoria Bridge Co., 68 Texas, 62.

Williams vs. Davidson, 43 Texas, 1.

Empire Mills vs. Alston, 15 S. W. Rep., 200.

N. W. Fertilizer Co. vs. Hyde Park, 97 U. S., 695.

Turnpike Co. vs. Ill., 96 U. S., 68.

Sedgwick on Statutory Construction, p. 291.

Sutherland on Statutory Construction, Secs. 554 and 555.

In the case of the Fertilizer Co. vs. Hyde Park, supra, the Supreme Court of the United States, in passing upon

rights of a corporation under its charter, stated:

"The rule of construction in this class of cases is that it shall be most strictly against the corporation. Every reasonable doubt is to be resolved adversely. Nothing is to be taken as conceded, but what is given in unmistakable terms or by an implication equally clear, the affirmative must be shown. Silence is negation, and doubt is fatal to the claim. It is axiomatic in the jurisprudence of this court."

Reason, of a parity with that sustaining the rules quoted, requires us to acquit the Constitution makers of any implication of being mere word jugglers. They were dealing with substances rather than shadows; with effects and results rather than mere technicalities and forms of expression, and in construing their work we must go beyond and behind the mask of form to the solid rock of reality. It would be arrant folly to say that the Constitution was designed to prohibit a state of facts and relations which, if allowed, would produce a certain effect, when called by one name, and at the same time recognize the same on a similar state of facts and relations which produce the same result as being legal simply because the second state is given a name different from that of the first! We must look to effects first, and to names only as being incidental.

## II. The Relations Between the Cotton Belt of Missouri and the Cotton Belt of Texas.

Under the foregoing and other pertinent facts the question arises as to what is the true relationship existing between the Texas company and the Missouri company. The case of Buie vs. C. R. I. & P. Ry. Co., 65 S. W., 27, arose upon a statement of facts very similar to those here existing. The technical as well as the substantial point involved in that case was whether or not personal service on the Texas corporation was such service upon the foreign corporation as would justify a personal judgment against the foreign corporation. In the decision of the case, the Supreme Court of this State said:

"The question submitted involved the determination of the fact, was the Texas corporation organized in good faith by its stockholders as an independent corporate body, or was it organized by the Pacific company, to be used as an instrument by which the foreign corporation might carry on its business in this State? * * * Holding the stock and the bonds (of the Texas company), the foreign company was in fact possessed of all the power that resided in the corporation and exercised it through officers selected from among those known to be in its interest. * * * The subsequent operation and management of the railroad is consistent only with the idea that the corporations are one and indivisible in their every interest. * * * We conclude that the Texas company is but the instrument used by the Rock Island and Pacific Company to carry on its business in Texas. By organizing the Chicago, Rock Island and Texas Railway Company, and through it operating the railroad in Texas, the Chicago, Rock Island and Pacific Company was doing its business in Texas by and through those persons who purported to represent the sub-corporation and the principal corporation was legally in Texas through its said agents and was liable to suit in the courts of this State by service of process upon the agents which represented it in that business. * * * No one of the facts or circumstances in evidence would, alone, be sufficient to show the Chicago, Rock Island and Pacific Railway Company subject to the jurisdiction of the courts of this State, but the combined force of all of these facts and circumstances compels the mind to the conclusion that the chartering of the Chicago, Rock Island and Texas Railway Company was a mere mask under which the Pacific company carried on its business in Texas."

To all intents and purposes—at least from a practical standpoint—the St. Louis Southwestern Railway Company of Texas under the authority cited above is simply a continuation or a projection of the body, spirit and mind of the Missouri corporation into Texas. The legal fiction which contemplates the existence of the Texas company is simply the mask under which the Missouri company carries on its business in this State.

The question arises therefore whether the legerdemain whereby the field of action of a foreign corporation is so enlarged as to embrace Texas territory is a consolidation within the meaning of Section 6 of Article 10 of the Constitution. In the consideration of this question familiar rules of construction require us to give the word "consolidate" a broad and liberal meaning in favor of the State. This would be true from a contemplation of the nature of the corporation and its being charged with a public use, and its enjoyment of exclusive and

special privileges and immunities. This rule of construction, supported by reason, independent of expressed declaration by law, is peremptorily demanded by the very language of the section itself. The constitutional provision prohibits the consolidation, not only by private or judicial sale, but "otherwise." The use of the term "otherwise" in the provision is a clear and unequivocal proclamation of the sovereign will that no consolidation of a domestic railroad corporation shall ever be had with a foreign corporation, perforce of any sort of device, scheme or legal fiction.

It follows, therefore, that a consolidation within the meaning of the Constitution may be had in various ways, limited in number or restricted in extent only by the cunning and inventive genius of those interested in capital seeking employment and advantage through the legal fiction of a corporation, which constitutes the only avenue left in this country of equal rights, to special and exclusive privileges. State vs. Ry. Co., 24 Texas, 114.

High authority admonishes us that "The Letter killeth, while the Spirit maketh alive."

Regard must be had for substance rather than form. Any arrangement, therefore, between a foreign corporation and a domestic corporation whereby the substantial effect and result of a consolidation are reached falls within the condemnation of the law. As said by the Supreme Court of Michigan in Payne vs. Railway Company, 76 N. W. Rep., 635, the term "consolidation" is an elastic one; it may include the union of two or more corporations into a new one with a different name, with or without extinguishing the constituent corporation.

The Supreme Court of Illinois has declared that any junction or union of the stock, property or franchises of two or more corporations whereby the conduct of their affairs is permanently or for a long period of time placed under one management, whether the agreement between them be by lease, sale or other form of contract, and whether it is effected by the dissolution of either of the companies, is a consolidation. People vs. Coke Company, 68 N. E. Rep., 950.

According to the Supreme Court of Missouri a consolidation of railroad companies does not necessarily mean a sale by one to another, and there may be a consolidation of roads where the franchises and privileges of each continue to exist in respect to the various roads. This holding was affirmed by the Supreme Court of the United States in an appeal of the same case. Green County vs. Connors, 109 U. S., 104.

The Supreme Court of Nebraska construes the word "consolidate" as used in a similar constitutional prohibition to mean "join" or "unite," and that the constitutional provision is an absolute prohibition against a railroad corporation uniting or joining its stock, property, franchises or earnings in whole or in part with another railroad corporation owning a parallel or competing line, and the law cannot be evaded by substituting a lease of such line for deed of conveyance.—State vs. Ry. Co., 38 N. W. Rep., 43.

Those interested in securing the exclusive privilege of consolidating railroad corporations by legislative grant, as well as those who have secured this privilege in the times past in the face of the law, usually contend that the term "consolidate" as used in the constitutional prohibitions must be given a strict and technical meaning in favor of the corporation. But this contention is unsound under the rules of construction obtaining in this country as well as upon reason. It is also unsound because nearly all courts have given the term an elastic quality and a broad meaning in favor of the State. The representative cases cited above indicate this unmistakably; those to follow apply this rule expressly.

The Federal court in the case of Ry. Co. vs. Jarvis, 92 Fed., 735, said:

"The act of forming two or more corporations and their properties into a more firm or compact mass, body or system is a consolidation."

It will hardly be denied that the arrangements between the St. Louis Southwestern Railway Company and the Texas company has not been to form "two or more corporations and their properties into a more firm or compact system." If this were not the result, it might appropriately be asked, from what source sprang the "Cotton Belt System," held out as operating through trains and cars from Waco, Texas, to St. Louis, Mo.? In the case last cited it was held that a consolidation may be brought about through a lease.

Our Supreme Court in the case of Ry. Co. vs. Morris et al., 68 Texas, 59, held that the constitutional prohibition against consolidation was a prohibition against a lease. This authority is sup-

ported by the case of Abbott vs. Horse Car Company, 80 N. Y., 27. The necessary effect of the decisions of the courts that a lease is prohibited where a consolidation is prohibited is, at least threefold; it means: (1) That a consolidation, within the meaning of the Constitution, may be had without destroying the separate and individual entity and identity of the various corporations consolidated, this being the express holding of the Supreme Court in the Morris case, supra, as to the effect of a lease; (2) that the term "consolidate" as used in the Constitution is not to be given a strict literal or technical meaning, but that it must be held to embrace any state of facts that produce substantially the same effects as would be produced by a technical consolidation: (3) and that the position of those who argue that a consolidation can not take place unless the entities or individualities of the various corporations consolidated are merged into the consolidated corporation and no longer exist, is untenable in reason, logic or law.

In the cases of Pearsall vs. Railway Company, 161 U. S., 646, and Northern Securities Company vs. United States, 193 U. S., 197, the Supreme Court of the United States held that ownership of the stock of one corporation by another in such a manner and to such an extent as to give the other company control of the former, is a consolidation. See, also,

Ry. Co. vs. Owens, 1 W. N. W., Civil Cases, 384.

Ry. Co. vs. Rushing, 69 Texas, —.

Ry. Co. vs. State, 72 Texas, 404.

Ry. Co. vs. State, 75 Texas, 434.

We hold, therefore, that the facts existing with reference to the St. Louis Southwestern Railway Company constitute a consolidation within the meaning of Section 6, of Article 10, of the Constitution, and that this arrangement originally was clearly violative of the law. As to the effect of long acquiescence in this arrangement by the State, and the course of dealing had by the Legislature in the past with reference thereto, and the remedies that might be invoked, we will not in this connection express an opinion. We deem it appropriate, however, in this connection to say that the State can waive a forfeiture, expressly (Constitution, Art. 4, Sec. 22), or by legislative acts recognizing the continued existence of a corporation (Angell & Ames Corporations, 742, 747; in re New York Elevated Railroad Company, 70 N. Y., 338).

III. Would the Consolidation of the Eastern Texas Railroad and the S. N. & S. T. Ry. Co. Contravene Section 6, Article 10, of the Constitution?

The answer to your second interrogatory brings us to a consideration of the anomalous condition where a railway company, created under the laws of this State, and which has consolidated with a foreign corporation in contravention of Section 6, of Article 10, of the Constitution, now seeks a further consolidation with other domestic roads.

As before stated, the presence of the St. Louis Southwestern Railway Company of Texas, under the facts, is simply the body and spirit of the Missouri company under an alias. This is true upon the reasons stated in the opinion of the court in the case of Buie vs. Ry. Co., quoted above; it is true by virtue of other facts pertinent to and in aid of the true answer to the specific question now under consideration.

Suppose that the strong arm of the State were to grasp and tear from the face of the Missouri company the mask of the Texas company? Suppose corporate death were decreed as the portion of the domestic corporation as the penalty for its misdeeds? Suppose that under existing conditions, it were possible to forfeit the charter of the St. Louis Southwestern Railway Company of Texas because of the relationship with the Missouri company, and that such action were taken and prosecuted to a successful culmination? What conditions would then exist?

The railroad of the Texas company could be neither abandoned or removed—Revised Statutes, Article 6625. The road would still remain a public highway, charged with a public use—Constitution, Article 10, Section 2. The property would remain the property of the company in the form of a trust fund to be sold for the benefit of its creditors and stockholders—Ry. Co. vs. Ry. Co., 22 S. W., 107; Ry. Co. vs. City of Galveston, 37 S. W., 27, 90 Texas, 398.

If a receiver were not appointed by the court to sell the property, the president and directors or managers of the company, by whatever name known, would become trustees for the creditors and stockholders, with all of the power of the corporation over the property, and for the purpose of giving an opportunity to the trustees to perform their duties the corporation, in a sense, would continue in existence for three years; or if a receiver were appointed, the corporation would continue in existence for such

time as the court might permit. Revised Statutes, Article 1206.

But there are no stockholders of the Texas company save and except the St. Louis Southwestern Railway Company (of Missouri). The Missouri company is also the main, if not the only considerable, creditor of the Texas company. The legal fiction of the Texas corporation having been through the alchemy of forfeiture, resolved into the airy elements of imagination whence it came, the St. Louis Southwestern Railway Company stands out in bold relief as the sole owner and proprietor of the road and equipment now supposedly owned by the Texas company. The Court of Appeals of New York has said that we should refuse "to be always and utterly trammelled by the logic derived from corporate existence when it only serves to distort or hide the truth." The Supreme Court of Texas enlarges upon that sentiment to the extent of saying that it "has always refused to be controlled by technicalities when interposed to prevent an investigation into the real facts of the case." "A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law" (Dartmouth College vs. Woodword, 17 U. S., 518); an entity "without soul and without body, except by legal intendment." State vs. Ry. Co., 24 Texas, 121. We are confronted with a proposal to bestow upon these "artificial beings" a portion of sovereign power; to endow them with property and rights belonging to the State; to grant them special and exclusive privileges and immunities, which, received by them, become private property. 24 Texas, 80.

Every citizen's rights are to a certain extent diminished and he is divested of a share of inherent power. The sovereign State in organic law has declared that none but a fit person shall receive its blessings,—declared in a voice imperative of heed that "any railroad company organized under the laws of any other State or of the United States" is a person, perforce, unfitted to receive this particular grant. Those charged with the bestowal and administering of this bounty must, therefore, look beyond the shadow of legal fiction to the substance of existent fact and demand that the beneficiary must keep the company of Ceasar's wife and with her be above suspicion! Brush aside the fiction of corporate existence! The corporation organized under the laws of Missouri would own in its own right, and be entitled to receive the proceeds of, the property of the Texas Company if some vis major were to remove the hypothetical person of the latter corporation; intellectual cunning, logic and even sophistry all must halt on the hither side of proving that the Missouri company does not really own, in a beneficial and practical sense, the property despite the existence of the Texas charter.

The language of Judge Brown used in the Buie case, supra, in our opinion here becomes applicable to the facts of this case: "The * * * operation and management of the railroad (system) is consistent only with the idea that the corporations are one and indivisible in their every interest. * * * The Texas company is but the instrument used by the * * * (Missouri) company to carry on its business in Texas. * * * These facts and circumstances compels the mind to the conclusion that the chartering of the (Texas company) was a mere mask under which the (Missouri) company carried on its business in Texas.'"

Again, as shown before, the Missouri company and the Texas company have already worked out for themselves a de facto consolidation. Each of them are estopped to deny that it is a valid and legal consolidation; they are compelled to regard it as such; they cannot enjoy the advantages without bearing the liabilities of their acts; their legal liabilities, as to all persons not parties or privies to the arrangement are the same as if a lawful consolidation had been had. Ry. Co. vs. Owens, 1 W. and W., Sections 384-388. The only person who can complain of the consolidation under the circumstances is the State. The State can regard the same as lawful or not, as it may choose.

Article 4, Sec. 22, Constitution.
State vs. Ry. Co., 24 Texas, 80.
State vs. Morris, 73 Texas, 435.
Taylor on Corporations, 460.
Redfield on Railways, 726.
Turnpike Co. vs. State, 19 Md., 239, 41 N. J. L., 496.

If the State should attempt to confer further rights of consolidation upon the Texas company, to that extent, by virtue of the very act, it would regard the former consolidation as legal, and would recognize the Missouri company as being the real owner and operator of the Texas company. Angell & Ames; Corp., 742-47; 70 N. Y., 338.

We hold, therefore, that, under the facts, the St. Louis Southwestern Railway Company of Texas is simply the

instrument whereby the Missouri company carries on its business in Texas. That the Missouri company is the beneficial and real owner of the Texas company; that in carrying on the purposes of the Missouri company there has been a de facto consolidation between the two; and that a consolidation between the St. Louis Southwestern Railway Company of Texas and the other companies named in the bill would be a consolidation of domestic railroad companies with a railroad company organized under the laws of another State within the meaning and prohibition of Section 6 of Article 10 of the Constitution of Texas.

As a matter of course, we recognize the fact that there are many elements of de facto consolidation existing in the relationship between the Missouri company and the Eastern Texas Railroad and the S. N. & S. T. Railway Company. There are other features lacking—such as physical control of roads, active joint operation, joint ownership of equipment, ownership of bonds by the Missouri company, etc., which exist in the arrangement between the first named companies. There may or may not be a consolidation between the companies last named and the Missouri company The decision of that question is not necessary here, because, if there has been a consolidation, it was had in open defiance of law and there exists ground for the forfeiture of the life of the offending domestic company. This being true, the Legislature cannot grant further rights until it first condones the unlawful act, and this we are unwilling to assume the Legislature will do. If there has not been a consolidation in fact between the Missouri company and the Eastern Texas Railroad and the S. N. & S. T. Railway Company, or either or both, then these companies remain in form and substance domestic corporations, and by Section 6 of Article 10 are prohibited from being absorbed by the St. Louis Southwestern Railway Company of Texas, now a part of the body of the foreign company.

### IV. Is There a Sufficient Consideration for the Bill?

"All free men, when they form a social compact, have equal rights, and no man, or set of men, is entitled to exclusive, separate public emoluments, or privileges, but in consideration of public services." (Bill of Rights, Section 3.)

Bearing in mind the rules of construction set forth above, it is apparent and conclusive that if the right to consolidate the railroads embraced within the bill is an exclusive public privilege, then it must be in consideration of public service. From that conclusion there is no appeal, and it is mandatory alike upon the Legislature and this Department so to construe it. Nothing is left to our judgment, nor to our discretion, nor to our views as to the merits of the measure. The Constitution itself, and its exact language, must be our guide and determine the result.

#### (I) The Nature of the Right to Consolidate.

Is the right to consolidate the various railroads defined in the bill a public service, for the granting of which the Legislature must, on behalf of the State, receive some consideration of public service? The word "privilege" has been defined by the Supreme Court of this State, when used with reference to the granting of some right to a corporation, as meaning a right peculiar to the person on whom conferred, not to be exercised by another or others. (Brenham vs. Water Co., 67 Texas, 552.)

The following are some of the definitions of the word "privilege," as laid down in Cyc., Vol. 32, 388 et seq.:

"It means in connection with the context a particular and peculiar benefit or advantage enjoyed by a person, company or class beyond the common advantage of other citizens; some right or favor granted by law contrary to the general rule. The enjoyment of some desirable right. An exemption from some general burden, obligation or duty. A peculiar exemption, franchise, right, claim, liberty and immunity; an immunity held beyond the course of the law; a peculiar immunity; legal power, authority, immunity granted by authority. A right, immunity, benefit or advantage enjoyed by a person or body of persons beyond the common advantage of other individuals; a right or immunity by way of exemption from the general law. A law made in favor of an individual. A particular law or a particular disposition of a law which grants certain special prerogatives to some persons contrary to the common right. A power granted to an individual or corporation to do something or enjoy some advantage which is not of common right."

In other words, the particular privilege sought to be given the companies designated by this measure is a peculiar privilege to which they alone are entitled

and is in the nature of a franchise or other thing, in the nature of an extension of the privileges of each of them, by which they become authorized under the law to merge all their rights and properties under one of the franchises or charters held by one of them.

"Franchises are special privileges conferred by the government on individuals, which do not belong to the citizens of the country generally at common right." (Bank of Augusta vs. Earl, 13 Pet., 519.)

"In its broad sense, the word 'franchise' is sometimes used to denote all the rights, powers and privileges of a corporation, especially those which are essential to its operations and management, and to make the grant of value." (Joyce on Franchises, Sec. 3.)

Other definitions given or expressions used by the courts in opinions or decisions may be briefly stated as follows:

"Privileges or a privilege; a right, privilege or power of public concern which should be reserved for public control; certain immunities and privileges in which the public have an interest; a privilege or immunity of a public nature; an exemption from a burden or duty to which others are subject; a constitutional or statutory right or privilege; a right reserved to the people by the Constitution; a right belonging to the government; a grant under authority of government; a grant of sovereign power; a sovereign prerogative emanating from the sovereign authority of the State, either directly or through a delegated body." (Joyce on Franchises, Sec. 3.)

It will appear from these definitions of privilege and franchise that as applied to the right sought to be given the several railroad corporations described in the bill that the language used in the Constitution, towit, "public privilege," has reference to just such rights as is sought to be obtained through the instrumentality of this legislative act. The bill purports to give to the several railroads named a right, privilege, authority and franchise not enjoyed by the citizens generally, nor by other corporations engaged in the same line of business. It is a special privilege of special extension of their corporate rights or a special and peculiar enlargement of their franchises.

In the case of Commonwealth vs. Whipps, 80 Ky., 270, p. et seq., the Supreme Court of Kentucky construed this provision in the Constitution of that State, towit:

"That all free men when they form a social compact are equal, and that no man or set of men are entitled to exclusive separate public emoluments or privileges from the community, but in consideration of public services."

It will be noted that this clause from the Constitution of the State of Kentucky is almost identically the same as that of our own State, which is now under consideration. The court, in passing upon this section, said:

"Without discussing the grammatical construction of the language used in this section, it is plain, we think, that this constitutional inhibition was intended to prevent the exercise of some public function, or an exclusive privilege affecting the interests and rights of the public generally."

In considering the question further, the court said:

"The granting of ferry privileges, the authority to build bridges and to make turnpikes, is the exercise of a governmental function, and usually requires the exercise of the power of eminent domain, and are granted in consideration of certain services to be performed for the benefit of the public. Such means of intercommunication are necessary in order that the citizen may perform his duty to the government, to facilitate commerce and social relations. The existence of this necessity and the existence of the fact that ordinarily these things can not be done without the exercise of the right of eminent domain, renders it the duty of the government to make the grant, and in doing so it may attach such conditions to the grant as it may deem proper; but in all such cases there is a public service or duty to be performed by the grantee. He furnishes the facilities for communication which existing necessity made it the duty of the government to do, and is to that extent acting for the government."

It is apparent from a consideration of this authority, as well as from the ordinary interpretation of the language used and the definitions we have heretofore referred to, that the language of the Constitution contemplates just such a grant of authority as is sought to be given in the bill under consideration, and that it was for such character of grant that the Constitution requires that there shall be a consideration of public service.

In the case of Ashley vs. Ryan, 153 U. S. 440, p. et seq., the Supreme Court of the United States had before it for

consideration the question as to whether or not the State of Ohio had the right and authority to impose a certain tax on corporations seeking to consolidate. In passing upon the question, the court, among other things, said:

"The purpose of the tender of the articles of consolidation to the Secretary of State was to secure the consolidation company certain powers, immunities and privileges which appertain to a corporation under the laws of Ohio. The rights thus sought could only be acquired by the grant of the State of Ohio, and depended for their existence upon the provisions of its laws. Without that State's consent they could not have been procured. Hence, in seeking to file its articles of incorporation, the company was applying for privileges, immunities and powers which it could by no means possess, save by the grace and favor of the Constitution of the State of Ohio and statutory provisions passed in accordance therewith. At the time the articles were presented for filing the statute laws of the State charged the parties with notice that the benefits which it was sought to procure could not be obtained without the payment of the sum which the Secretary of the State exacted. As it was within the discretion of the State to withhold or grant the privilege of exercising corporate existence, it was, as a necessary resultant, also within its power to impose whatever conditions it might deem fit as prerequisite to corporate life. * * * Having thus accepted the grace of the State and taken the advantages which sprang from it, the company can not be permitted to hold on to the privilege or right granted, and at the same time repudiate the condition by the performance of which it could alone obtain the privilege which it sought."

Speaking further on in the case, the court quoted with approval from the case of California vs. Pacific Railroad Company, 127 U. S., 1, 40, the following:

"A franchise is a right or privilege, or power of public concern, which ought not to be exercised by private individuals at their mere will and pleasure, but should be reserved for public control and administration. * * * Under our system, their existence and disposal are under the control of the legislative department of the government, and they can not be assumed or exercised without legislative authority. * * * No private person can take another's property, even for public use, without such authority; which is the same as to say, that the right of eminent domain can only be exercised by virtue of a legislative grant. This is a franchise. No persons can make themselves a body corporate and politic without legislative authority."

The court in passing further upon the case said:

"So, the State has an undoubted power to exact a bonus for the grant of a franchise, payable in advance or in futuro; and yet that bonus will necessarily affect the charge upon the public which the donee of the franchise will be obliged to impose. The stipulated payment in this case, indeed, is nothing more or less than a bonus."

This case is authority for the proposition that the constitutional requirement that the Legislature shall require persons or corporations receiving an exclusive public privilege to, in effect, pay for the same in public service, is a constitutional one, and one clearly within the rights of the State.

The grant of an original charter to a railway corporation is recognized to be the grant of an exclusive and special privilege that must be supported by a consideration of a substantial and enforceable nature. The Supreme Court of this State in the case of Railway Company vs. Morris et al., recognized and applied this principle, saying: "It is well settled that corporations organized for public purposes can not by contract of sale, or lease or otherwise, render themselves incapable of performing their duties to the public, or in any way absolve themselves from the obligation which forms the main consideration for giving them corporate existence," etc. In support of that proposition the court in that case cites: Thomas vs. Ry. Co., 101 U. S., 71; Price on Railroads, 10; Taylor's Law of Corporations, 305, 131-2; Morawetz on Private Corporations, 49, 485. See Ry. Co. vs. Morris et al., 67 Texas, 699.

The same principle was recognized, applied and enforced by our Supreme Court again in the case of Ry. Co. vs. Morris & Crawford, 68 Texas, 59. In the great case of Reagan vs. Farmers' Loan and Trust Company, 154 U. S., 362, the Supreme Court of the United States had under consideration the Railroad Commission law of Texas, and during the course of the opinion that court had occasion to discuss the nature of the relation existing between the State of Texas and the International & Great Northern Railroad Company created by

reason of the grant of the charter to the railroad company; upon that question the court said:

"The International & Great Northern Railroad Company is a corporation created by the State of Texas. The charter which created it is a contract whose obligations neither party can repudiate without the consent of the other. * * * Obviously one obligation assumed by the corporation was to construct and operate a railroad between the termini named; and on the other hand, one obligation assumed by the State was that it would not prevent the company from constructing and operating the road."

It appears to us that if the grant of a charter—that is, a franchise simply to be a corporation—is the grant of a privilege for which a material and enforceable consideration must be exacted, then it ought to require neither argument nor authority to support the proposition that the grant of additional and valuable rights and privileges and franchises must also rest upon a valuable consideration.

Section 31, of Article 7, of the Constitution of Texas of 1845 reads as follows:

"No private corporation shall be created unless the bill creating it shall be passed by two-thirds of both houses of the Legislature; and two-thirds of the Legislature shall have power to revoke and repeal all private corporations, by making compensation for the franchise. And the State shall not be part owner of the stock, or property, belonging to any corporation."

In the adoption of that Constitution the people recognized every power and privilege granted to a corporation as being a franchise, and recognized the franchise as being a valuable property right in the hands of the corporation. If property in the hands of the corporation, it needs neither argument nor authority to demonstrate that the same thing is property—at least potential—in the hands of the State.

This provision of the Constitution of 1845 was before the Supreme Court in the case of the State vs. Southern Pacific Railway Company, 24 Texas, 80. Judge O. M. Roberts, who delivered the opinion of the court, held the franchise to be a valuable property right, and said:

"Every grant of a private corporation confers privileges and immunities not enjoyed of common right by the citizen, which can not be justified otherwise upon a supposed consideration of some direct or indirect public benefit. (Id., 50; 2, Bill of Rights.) It is upon this principle that privileges and immunities are conferred on the officers of the State. * * *

"The correct view of the subject is, that the charter is a grant of franchises by the State, and the rights granted to the company are limited by the charter. They have a right to a corporate body—that is, a franchise; they have a right to construct a public railroad and charge for its use (incidental powers are conferred to accomplish these objects); these constitute a franchise. These franchises are the property of the company. * * *

"A consideration of the well settled principles of law, in reference to the design and objects of the charter, will establish this view of the subject. First, then, this railroad is a great public highway, laid out by the State for the purpose of facilitating the public, both in the travel and in the transportation of the commerce of the country. It is only on this idea that it is a public highway, that the State can take, or authorize the company to take, for its track, the lands of individuals on its route. The State has no constitutional right to take the land of one person and give it to another, to remain private property. (Railroad Company vs. Chappel, 1 Rice, Law Rep., 388; 2 Dev. & Bat. Law Rep., 468, 469; Erie & N. E. Railroad Co. vs. Casey, 2 Casey, Rep., 308.) The State has reserved itself the right, in its Constitution, to repeal the charter by a two-thirds vote of the Legislature, and by paying for the franchise. (Const., 31; Hart. Dig., 74.) A general law has been passed, authorizing the State to resume the franchises, upon full compensation. (Laws, 4th Leg., Extra Sess. of 1853, p. 58.) To encourage this public work the State has provided for a loan of $6000 per mile, and has made a generous donation of sixteen sections of land per mile. The creation of this company, its progress with the road and its use as it is completed, will engender rights and liabilities as to third persons for and against the company which may demand regulation, and must impose a burden on the government. These are the great interests of the State in this public enterprise. The State might undertake the work itself; or it may, as it has undertaken to do in this instance, accomplish it through the instrumentality of a private corporation created for

that purpose. In doing this it has not abandoned these great interests, nor has it compressed them into the narrow confines of a few sections of the charter. The corporation is created and invested with just such powers as result from being made a corporate body, and also with such powers, privileges and benefits as are specified in the charter, which were supposed necessary and sufficient to enable the company to build the road, and use it for their own profit, in the manner designed by the charter.

"This blending of a private investment for private gain upon a public work was well considered in the case of the Railroad Company vs. Davis by the Supreme Court of North Carolina. (2 Dev. & Batt., Law Rep., 469.) They say that 'an immense and beneficial revolution has been brought about in modern times by engaging individual enterprise, industry and economy in the execution of public works of internal improvement. The general management has been left to individuals, whose private interests prompt them to conduct it beneficially to the public; but it is not entirely confided to them. From the nature of their undertaking and the character of the work, they are under sufficient responsibilities to insure the construction and preservation of the work, which is the great object of the government. The public interest and control are neither destroyed nor suspended. The control continues as far as it is consistent with the interests granted, and in all cases as may be necessary to the public use. The road is a highway, although the tolls may be private property, by force of the grant of the franchise to collect them. It is a common nuisance to allow it to become ruinous or to obstruct it. The government may, upon sufficient cause, claim a forfeiture of the charter, or compel the execution and repairs of the road, by those undertaking them, by any means applicable to other persons charged with like duties in respect to other highways. The difference is, that the corporation, in lieu of the sovereign, has the custody and property of the road and the collection of the tolls in reimbursement of the cost of construction and remuneration for labor and risk of capital. As to the corporation, it is a franchise, like a ferry or any other. As to the public, it is a highway and in the strictest sense, public juris." These franchises being private property, are amply protected, though blended with and vested in a public work by the spirit, if not by the letter, of the Constitution."

The principle that the granting of the right to consolidate with or to absorb another corporation is in itself the grant of a franchise and valuable rights is recognized by the Supreme Court in the case of Stephenson vs. Ry. Co., 42 Texas, 167, wherein the court says:

"We think the inference is fully warranted that from the consolidation thus effected by authority of the State of Texas, there exists a consolidated Texas corporation, known by law of this State as the Texas & Pacific Railway Company, in which is vested all the rights, powers and privileges to which the Southern Pacific Railway Company was entitled previous to said consolidation, and that the corporate existence of the Southern Pacific Railway Company has been merged in and is now represented by said Texas & Pacific Railway Company; that the charter of the Southern Pacific Railroad Company is neither lapsed, forfeited, annulled or surrendered, but still exists in its full force and vigor; these rights, privileges and franchises being exercised to the extent and in the manner agreed and stipulated by the terms of their consolidation by the corporate organization and name of the Texas & Pacific Railway Company. If the entire corporate existence of the Southern Pacific Railroad Company is not merged in the Texas & Pacific Railway Company by the consolidation of these companies, it certainly devolved upon the party moving to dismiss the writ to rebut this presumption, plainly inferable, from the acts of the Legislature, under and by virtue of which this company exercises and enjoys the franchises and privileges conferred upon it by the State of Texas, and is entitled to be known and recognized as a Texas corporation."

In the case of Ry. Co. vs. Rushing, 69 Texas, 306, the effect of an attempted consolidation of two roads under an act of the Legislature was before the court, the appellant company contending that by virtue of the alleged consolidation it was relieved of liability in the case. The court, holding the power to consolidate to be a special privilege, said:

"In order to render a contract of sale effective, there must be both a power to sell in the vendor, and a power to purchase in the vendee. * * * The appellant claimed a right to which it was not entitled by the general laws of the State. It claimed a privilege not ac-

corded to railroad companies generally, either by common law or statute. It claimed this under a private act passed for its special benefit."

Corporations at common law have no right to consolidate; no inherent power to consolidate exists in corporations. Field on Corporations, Sections 426, 427. A contract of consolidation to be valid must have legislative assent; that is, the consent of the State. Field on Corporations, Sections 426, 427.

Ry. Co. vs. State, 75 Texas, 434.

Ry. Co. vs. Owens, 1 W. & W., Sec. 384.

Ferguson vs. Meredith, 1 Wall., 25.

Pearce vs. Madison, 21 How., 441.

Kavanaugh vs. Loan Assn., 84 Fed. Rep., 290.

10 Cyc., 289, note 97.

Moreover, the right must be expressly conferred upon each and all of the constituent coporations.

Morrill vs. Smith County, 89 Texas, 529.

Ry. Co. vs. Kentucky, 161 U. S., 677.

Ry. Co. vs. Ry. Co., 145 U. S., 393.

The State may couple the grant with such terms and conditions as it may choose to impose.

Ry. Co. vs. Kentucky, 161 U. S., 677.

Ins. Co. vs. N. Y., 134 U. S., 594.

California vs. Ry. Co., 127 U. S., 1.

Ry. Co. vs. Maryland, 21 Wall. (U. S.), 456.

10 Cyc., 290.

Even after the grant of power to consolidate has been made, it may be withdrawn by the State before the consolidation is affected, or has actually taken place.

Ry. Co. vs. Kentucky, 161 U. S., 677.

Pearsall vs. Ry. Co., 161 U. S., 646.

But the grant, if accepted and acted upon by the corporations, cannot be withdrawn or substantially impaired by the State.

Dartmouth College vs. Woodward, 46 Wheaton (U. S.), 518.

Zimmer vs. State, 30 Ark., 677.

From these conditions and characteristics of the grant of the power to consolidate, it follows as an inevitable matter of reason that the grant of the power to consolidate is a special and exclusive privilege and immunity, which, before being granted, belongs to the State and is property in a potential sense; and which, being granted to, and accepted and acted upon by, the corporations, becomes valuable and vested private property and a property right that cannot be taken away or impaired except upon compensation and according to the due process of the law. This is a government of equal rights, so ordained and dedicated from its foundation. The eternal and immutable anathema of Sovereign Power has been pronounced against Special Privilege. One exception, and one alone, has been fixed, and to it we must look for legislative authority for any grant smacking of a privilege or immunity not to be enjoyed by all men alike; that exception is the special and exclusive privileges may be granted only "in consideration of public services." The bill to be valid must, then, be supported by a consideration, or binding obligation to perform, public services not now owed by the constituent corporations, and which they cannot now be forced by law to perform.

(II) The Nature of the Consideration.

The grant of the power to consolidate being the grant of an exclusive separate privilege which must be supported by a consideration, the question as to what is such a consideration immediately arises. Section 3 of the Bill of Rights, heretofore quoted, reads in effect that no man or set of men shall be entitled to exclusive separate public privileges, but in consideration of public services, or to restate it, public services shall be the consideration of exclusive, separate, public privileges.

The word "consideration," as used here, is not used to represent or designate some intangible or moral quality, but has a defined, usual and legal meaning. In this instance the consideration is named to be public service. Under this bill the exclusive separate public privilege conferred upon the companies is the right of consolidation. The Constitution contemplates that the people of the State shall receive something in the way of compensation for this exclusive privilege. The word "consideration" has been variously defined, some of which definitions will be noted as follows:

"A 'consideration consists of some benefit or advantage accruing to the promisor or some loss or disadvantage incurred by the promisee. A consideration is an essential ingredient to the legal existence of every simple contract."

Eastman vs. Miller, 113 Iowa, 404.

Conover vs. Stillwell, 34 N. J. Law, 54.

"Consideration is something of value in the eye of the law, moving from one person to another. It may be of some benefit to the latter or some detriment to the former."

N. Y. & M. G. Co. vs. Martin, 13 Minn., 417.

Kemp vs. National Bank of the Republic, 100 Fed., 48.

"There must be something given in exchange, something which is mutual, which is the inducement to the contract; and there must be a thing which is lawful and competent in value to sustain the assumption. It was an early principle of the common law that a mere voluntary act of courtesy would not uphold an assumpsit, but a courtesy shown by a previous request would support it."

Kansas Mfg. Co. vs. Gandy, 11 Neb., 448.

"'Consideration' may be described generally as mere matter accepted or agreed on as a return or equivalent for a promise made, showing that the promise is not made gratuitously."

Donahoe vs. Rich, 28 N. E., 1001.

"The term 'consideration,' as used in the law of contracts, means 'some benefit or advantage accruing to the party promising.'"

Forbis vs. Inman et al., 31 Pac., 204.

"One of the broadest and perhaps best definitions of the 'consideration' for a contract is the reason which moves the contracting party to enter into an agreement. Chitty speaks of the consideration as the 'motive or inducement to make the promise.'"

1 Pars. Cont., 355, says: "The consideration is the cause of the contract."

Roberts vs. City of New York, 5 Abb. Prac., 41.

The provision of the Constitution and the definition and meaning of consideration which we here insist upon is one similar to that meaning which has always been given the word "consideration" in relation to contracts and the law generally. For example: "To constitute consideration it is not absolutely necessary that a benefit should accrue to the person making the promise. It is sufficient that something valuable flows from the person to whom it is made, and the promise is the inducement to the transaction."

Violett vs. Upton, 9 U. S., 142.

It is apparent that these various definitions of "consideration," which all in effect amount to the same thing, are applicable to the word "consideration" as used in the Constitution, and that in the Constitution the particular consideration specified is public service.

It is an elementary principle of law that where a person promises to do what he is already bound in law to do is not a good or sufficient consideration.

"A promise to do what a person is bound to do by law is not a good consideration for any undertaking."

Eastland vs. Miller, 113 Iowa, 404.

"A promise to do what the promisor is already bound to do cannot be a consideration, for if a person gets nothing in return for his promise but that to which he is already legally entitled, the consideration is unreal. Therefore, as a general rule the performance of, or promise to perform, an existing legal obligation is not a valid consideration. This legal obligation may arise from (1) the law independent of contract or it may arise from (2) a subsisting contract."

Cyc., Vol. 9, p. 347, and many cases cited in Note 39.

"Subsisting Obligation in Law.—Where a party is under a duty created or imposed by law to do what he does or promises to do his act or promise is clearly of no value and is not a sufficient consideration for a promise given in return. Thus since a public officer is at law required to perform his duties for his salary or other stated compensation, a promise to pay him more than this is founded on no consideration, for he is simply promising in return to do or is actually doing what he is bound to do."

Cyc., Vol. 9, pp. 347 and 348, and many authorities cited in Notes 40 and 41.

A case illustrative of this rule last laid down and bearing directly on the issue here is that of Kansas City Ry. Co. vs. Morley, p. 304, in which it was held that a contract between a city contractor for the construction of a sewer under a street and a railway company having a right of way over the street, to the effect that the contractor would pay the company for bridging its tracks while he builds the sewer, was without consideration and void, because the railroad company's right of way was subject to the paramount right of the city to build the sewer, and it was incumbent on the company to protect its own tracks.

45 Mo. App., 304.

In the case of Wharton vs. the Erie R. R. Co., 65 N. Y. App., the New York Appellate Division 587, 72 N. Y. Supp., 1018, it was held that where a statute provided that railroad companies, on application, should issue mileage books good for 500 or 1000 miles, entitling the holder to the same rights and privileges to which the highest class ticket issued by such corporation would entitle him, and a railroad company on issuing

a book to plaintiff, required him to sign a contract that it would be accepted for transportation only for journeys wholly within the State, such stipulation was without consideration and void, since it was the duty of the company to issue the book without other conditions than those prescribed by the statute.

"A promise to pay a common carrier greater compensation than it is entitled to charge or to pay it for delivery of goods which it is bound to deliver without such payment, is void because there is no consideration." (Cyc., Vol. 9, p. 349, and cases cited in Note 46.)

"Subsisting Contractual Obligation.—The promise of a person to carry out a subsisting contract with the promisee or the performance of such contractual duty is clearly no consideration, as he is doing no more than he was already obliged to do and hence has sustained no detriment nor has the other party to the contract obtained any benefit. Thus a promise to pay additional compensation for the performance by the promises of a contract which the promisee is already under obligations to the promisor to perform is without consideration." (Cyc., Vol. 9, pp. 349, 350, and cases cited in Notes 54 and 5.)

These authorities are sufficient to sustain the proposition that the agreement on the part of the companies named in the bill under consideration, as set out in their respective charters and franchises and obligations, is not a sufficient consideration for public service defined in the Constitution. They were already obligated by law and by the contractual relationship existing between them and the State in their charters to perform to the fullest extent the public service required by their charters and the laws of this State, and there is nothing in this bill which obligates them to perform any other kind or any further public service.

The charters of all corporations are granted in consideration of the public service to be rendered by the corporation, and for this reason the laws of this State have limited the purposes for which corporations may be formed, as will be observed by a consideration of Article 1121 of the Revised Statutes. In other words, the Legislature does not permit the creation of corporations for all lawful purposes, but only for such lawful purposes as it has appeared to the Legislature that it was for the public interest to permit to be created.

With reference to the creation of railroad corporations, the rule here laid down applies with more than the usual force; that is to say, the rule that the charter of a corporation is granted to it in consideration of public service.

Article 6633 of the Revised Statutes provides that if any railroad corporation shall not within two years after its articles of association have been filed and recorded, begin the construction of its road and construct, equip and put in running order at least ten miles of its road, or if any such railroad after the first two years shall fail to construct, equip and put in good running order at least twenty additional miles of its road each and every year succeeding until the completion of its line, such corporation shall in either case forfeit its corporate existence and its power shall cease.

This statutory provision is merely carrying into effect the constitutional provision heretofore referred to, to the effect that for an exclusive public privilege granted the grantee must render a public service, and that when the grantee fails so to do, the public privilege or franchise granted him shall be canceled. This is the underlying principle of the entire doctrine of forfeiture of charters for non-user or misuser. It would be a useless consumption of time for us to submit a large number of authorities on this proposition.

Cook on Corporations, Vol. 2, Sec. 633.

Thomas vs. Railroad Co., 101 U. S., p. 78 et seq.

In the latter case the Supreme Court of the United States says, in discussing the question as to the legality of a certain contract made by a railroad company, and as stating the contract was unlawful, said:

"That principle is that where a corporation like a railroad company has granted to it by charter a franchise intended in large measure to be exercised for the public good the due performance of those functions being the consideration of the public grant, any contract which disables the corporation from performing those functions which undertakes, without the consent of the State, to transfer to others the rights and powers conferred by the charter and to relieve the grantees the burden which it imposes, is a violation of the contract with the State and is void as against public policy."

It will be noted upon an examination of this case that the contract under consideration, and which was held in-

valid, was a consolidation agreement entered into by the railroad company.

It appears, therefore, from these authorities that when a charter or privilege is granted to a corporation it is granted in consideration of public service and that when the grantee is placed in a position where it can not, or does not, perform a public service, then the consideration of the grant fails and the State has the right to forfeit the charter or franchise of the corporation. Now, the grant or privilege sought to be conferred by this bill upon the buying and selling companies is one of so much importance and which needs to be safeguarded in each individual instance and case with so much care and caution that the Legislature of this State has never seen fit to pass a general statute permitting the consolidation of railroads. The reason of it is at once apparent. It is a larger right and one of more importance than the right of ordinary corporate existence, and one which must be determined upon the individual merits of the particular transaction; and the fact that it is a larger franchise and one requiring a greater degree of care, but emphasizes the issue which we have submitted, that the State ought to receive some consideration for the grant; that the consideration of public service ought to be named and specified in the bill and the companies bound and obligated to perform it. Let us suppose an instance. Let us suppose that this bill is permitted to become a law and complaint is finally made that the corporations are not rendering the public service contemplated as the consideration for the bill. How would this Department determine whether they were rendering such service or not? The public service they were to render has not been defined either expressly or impliedly in the measure. When a corporation obtains its charter one of the requirements of Article 1121 is, that it must specify its purpose. Manifestly, this is required under the law for three reasons. In the first place, in order to determine whether or not its purpose is a legal one and not against public policy. Second, so that all who deal with the corporation may know the extent of its power and authority; and, third, so that the Secretary of State and the Attorney General's Department may see whether or not the purpose specified is one permitted under Article 1121, and, therefore, one for the public service of which the State is willing to grant the special privilege of corporate existence. When an ordinary railroad charter is granted, the incorporators are required to state in their articles of incorporation what they propose to do. They must state the beginning and terminal point of their line, the length of the line, and describe in a general way what public service they expect to perform as a consideration for the special privilege of becoming a corporate body. These provisions with reference to the incorporation of ordinary corporations and of railroad companies are provisions of law enacted to carry out the constitutional purpose of Section 3, Article 1, of the Bill of Rights, which requires that for a special privilege the recipient shall perform public service, and it is the opinion of this Department that any grant of special privilege, such as is contemplated in the bills to the St. Louis Southwestern Railway Company of Texas and its associates, must also specify the public service which the people of Texas are to receive in consideration of this particular special privilege conferred upon these corporations.

(III.) The Stated Consideration of the Bill.

The emergency clause of Senate bills Nos. 78 and 172 and the substitute bill each declare that "important public interests are to be subserved by the passage of this act, providing for the enlargement of an important railroad system of the State."

The only provisions of the several bills that in any way indicate an enlargement of the railroad system are as follows:

1. Section 1, Senate bill No. 78 provides that the St. Louis Southwestern Railway Company of Texas, after purchasing the Stephenville North & South Texas Railway Company, shall have "also the right to construct a line from said Stephenville, in Erath county, to the town of Thurber, in said county, as the lines of railway are defined in its charter and amendments thereto."

2. Section 1, Senate bill No. 172, after granting the right to purchase the Eastern Texas Railroad Company's railroad, provides that the St. Louis Southwestern Railway Company of Texas shall have "the right to construct a line from Kenard to Crockett, in said Houston county, as defined in its charter and amendments thereto."

3. Section 1 of the substitute bill restates the rights mentioned above in

paragraphs 1 and 2, and Section 4 contains this language: "Or in the event of such sale, the St. Louis Southwestern Railway Company of Texas shall complete the unfinished portion of the railroads so purchased between the termini as defined in the charter of the Stephenville North & South Texas Railway Company and amendments thereof."

It is the opinion of this Department that the language used in Senate bill No. 78 and Senate bill No. 172 does not create any obligation on the part of the companies to make the constructions and extensions referred to, and that should the bills become laws there will rest no legal obligation upon them to do so.

As stated the bills recite:

"The fact that important public interests are to be subserved by the passage of this act, providing for the enlargement and improvement of an important railway system of the State and for additional transportation facilities for the citizens thereof, creates an imperative public necessity and emergency, etc."

An analysis of this statement shows that the important public interests to be served is merely the enlargement of an important railroad system of the State. Let us analyze the situation. In what manner is an important railroad system enlarged? It is enlarged only by the absorption of other systems, and not a single mile or more of railroad track, nor the improvement of a single mile of the present track, nor the improvement of any facilities on any of the lines is either required or provided for in the measure. So far as the service is concerned, under the charters of each of the several railroad corporations involved these corporations are strictly bound to the State and its people to observe the requirements of law and furnish the public a service consistent with the purposes of their franchises and charters. When these corporations become merged into the purchasing company, the extent of the territory covered by the purchasing company and the amount of service which it may render remains exactly the same as that covered by the selling companies and the purchasing company as they now exist today, and the charter of the purchasing company and the lease governing it required no greater a degree in the quality of public service or the territory covered than that required of the several companies as they exist today.

We conclude that no sufficient consideration is shown for the grant of privileges contained in Senate bill No. 78 and Senate bill No. 172, and that they contravene Section 3 of Article 1 of the Constitution for this reason.

If the language quoted in (3) above from the substitute bill was intended to create a legal obligation upon the St. Louis Southwestern Railway Company to construct the line from Stephenville, a distance of about twenty-six miles, and the language used is capable of that construction, in our opinion a sufficient consideration is shown for the grant of the right to consolidate as regards this company. Your body itself is the best judge of what was intended by the use of the language quoted, but in our opinion, since no penalty is provided for a failure to construct the line, the provision is rather vague and indefinite to create an enforcible legal obligation. One of the considerations existing to support the grant of a charter or amendment thereto to a railway corporation is the enforcible promise of the company to build a railroad or extension or branch line. R. S., Title 115, Chaps. 1 and 2.

In discussing the nature of the contract between the State of Texas and the International & Great Northern Railway Company involved in the charter of the company, the Supreme Court of the United States in the case of Reagan vs. Farmers' Loan and Trust Co., 154 U. S., 393, said:

"Obviously, one obligation assumed by the corporation was to construct and operate a railroad between the termini named (in the charter), and on the other hand, one obligation assumed by the State was that it would not prevent the company from so constructing and operating the road."

Since a permit to consolidate is a distinct and valuable enlargement of charter rights, more important, in a sense, and to be safeguarded more strictly, as shown before, we believe that a requirement of further construction, or some other public service, must be made at all events, and that the construction of additional mileage is the minimum of that requirement.

No requirement of further construction as to the Eastern Texas Railroad Company is attempted in any of the bills, and the grant of the right to absorb that road must fail for lack of consideration.

Yours truly,
LUTHER NICKELS,
Assistant Attorney General.

This opinion has been passed upon, approved by the Department in executive session, and is now ordered recorded.

B. F. LOONEY,
Attorney General.

## APPENDIX B.

### COMMITTEE REPORTS.

Committee Room,
Austin, Texas, March 1, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: A majority of your Judiciary Committee No. 1, to whom was referred Senate bill No. 367, A bill to be entitled "An Act to amend Article 23 of Chapter 1, Title 1, of the Code of Criminal Procedure of the Revised Statutes of 1911,"

Have had the same under consideration and beg leave to report the same back to the Senate with the recommendation that it do pass.

MORROW, Chairman.

Committee Room,
Austin, Texas, March 1, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: A minority of your Judiciary Committee No. 1, to whom was referred Senate bill No. 367, have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do not pass.

MORROW,
HUDSPETH.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Judiciary Committee No. 1, to whom was referred Senate bill No. 167, A bill to be entitled "An Act to amend Sections 7684, 7685, 7686, 7688, 7695 and 7697, in Chapter 15, of the Revised Civil Statutes of the State of Texas, adopted by the Thirty-second Legislature of the State of Texas and approved by the Governor of the State of Texas on the first day of April, 1911, relating to the collection of taxes heretofore, and that may hereafter be levied, making such taxes a lien on the land taxed, establishing and continuing such lien and providing for the sale and conveyance of the land delinquent for taxes since the first day of January, 1901, which may have been returned delinquent or reported sold to the State or to any county, city or town,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, with amendment.

Amend by striking out "1901" in Article 7684 and insert "1911"; by striking out "1901" in Article 7685 and insert "1911"; by striking out "1901" in Article 7686 and insert "1911," and amend the caption by striking out "1901" and insert "1911."

MORROW, Chairman.

Committee Room,
Austin, Texas, March 3, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Judiciary Committee No. 1, to whom was referred Senate bill No. 300, A bill to be entitled "An Act validating marriages in all instances where the return and record of the marriage license has not been made as provided by law,"

Have had the same under consideration and I am instructed to report the same back to the Senate with the recommendation that it do pass.

MORROW, Chairman.

Committee Room,
Austin, Texas, March 1, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: A majority of your Judiciary Committee No. 1, to whom was referred Senate bill No. 260, A bill to be entitled "An Act to amend Article 1997, Chapter 15, Title 37, of the Revised Civil Statutes of the State of Texas relating to judgments in the district and county courts, and to add Article 1997a to said chapter,"

Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do pass.

MORROW, Chairman.

Committee Room,
Austin, Texas, March 1, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: A minority of your Judiciary Committee No. 1, to whom was referred Senate bill No. 260, have had the same under consideration, and we, a minority of your committee, beg leave to report

the same back to the Senate with the recommendation that it do not pass.

MORROW.
HUDSPETH.

Committee Room,
Austin, Texas, March 1, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: A majority of your Judiciary Committee No. 1, to whom was referred Senate bill No. 259, A bill to be entitled "An Act to amend Article 1626, Chapter 9, Title 32, of the Revised Civil Statutes of the State of Texas, in reference to judgments in the Court of Civil Appeals,"

Have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do pass.

MORROW, Chairman.

Committee Room,
Austin, Texas, March 1, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: A minority of your Judiciary Committee No. 1, to whom was referred Senate bill No. 259, have had the same under consideration, and beg leave to report the same back to the Senate with the recommendation that it do not pass.

MORROW.
HUDSPETH.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Agricultural Affairs, to whom was referred Senate bill No. 207, A bill to be entitled "An Act to amend Chapter 24 of the Acts of the First Called Session of the Thirty-first Legislature of the State of Texas, entitled 'An Act to provide for the establishment and maintenance of agricultural, horticultural and feeding experimental stations in certain parts of Texas; to provide for proper appropriations therefor, and repealing all laws in conflict herewith, and declaring an emergency,' and providing further for a governing board for the Texas Agricultural Experiment Stations, defining the place of residence of the Director of Texas Experiment Stations, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, with the following amendments:

Strike out all of Section 4. Amend Section 5 by striking out the words "$250 during any one year" and add in lieu thereof the following: "Actual expenses, not to exceed $10 per day." Amend Section 8 by adding thereto the following: "Provided, that the Main Station, at College Station, Brazos county, Texas, shall not be moved."

ASTIN, Chairman.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Agricultural Affairs, to whom was referred Senate bill No. 319, A bill to be entitled "An Act to provide for the establishment and maintenance of an agricultural experiment station at Alta Loma, Texas, for the purpose of conducting experiments in fruits, vegetables, grains and other farm crops, and studying soil problems in Galveston county and contiguous counties in the gulf coast region of Texas, and disseminating useful information, making necessary appropriation therefor, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

ASTIN, Chairman.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Public Health, to whom was referred House bill No. 355, A bill to be entitled "An Act authorizing the establishment of county hospitals and dispensaries, providing for elections for bond issues and the issuance of bonds for the cost of erection of same, and providing revenue for maintaining and managing same, and providing for the appointment of a board of managers, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, with the following amendments, so that it may conform to the amendments adopted by the Senate to Senate bill No. 189, which bill is similar to House bill No. 355, and that it be not printed.

Amend Section 1 by striking out the present section and substituting:

Section 1. The commissioners court of any county shall have power to establish a county hospital and to enlarge any existing hospitals for the care and treatment of persons suffering from any illness, disease or injury. The commissioners court of such county may, without being petitioned to do so, at such times as it may deem proper, not oftener than once in twelve months, submit to the property tax paying voters of such county the proposition of issuing bonds for the construction or purchase of the necessary buildings and locations for, or additions to, such county hospital. At intervals of not less than twelve months, 5 per cent of the qualified property tax paying voters of a county may petition the commissioners court of such county to provide for the establishing or enlarging of a county hospital, in which event it shall be the duty of said commissioners court within the time designated in such petition to submit to the property tax paying voters of the county either at a special or at a regular election, the proposition of issuing bonds in such aggregate amount as may be designated in said petition for the establishing or enlarging of such hospital; and whenever any such proposition shall receive a majority of the votes of the qualified property tax payers voting at such election, said commissioners court shall establish and maintain such hospital, and shall have the following powers:

To purchase and lease real property therefor, or acquire such real property, and easements therein, by condemnation proceedings, in the manner prescribed by the present law authorizing a condemnation of right of way of railroads.

To purchase or erect all necessary buildings, make all necessary improvements and repairs and alter any existing buildings, for the use of said hospital; provided, that the plans for such erection, alteration or repair shall first be approved by the State Health Officer, if his approval is requested by the said commissioners court.

To cause to be assessed, levied and collected, such taxes upon the real and personal property owned in the county as it shall deem necessary to provide the funds for the maintenance thereof. and for all other necessary expenditures therefor.

To issue county bonds to provide funds for the establishing, enlarging and equipping of said hospital and for all other necessary permanent improvements in connection therewith.

And to do all other things that may be required by law in order to render said bonds valid.

To appoint a board of managers for said hospitals as hereinafter provided.

To accept and hold in trust for the county, any grant or devise of land, or any gift or bequest of money or other personal property or any donation to be applied, principal or income, or both, for the benefit of said hospital, and apply the same in accordance with the terms of the gift.

Amend Section 2 by striking out lines 1 to 12, inclusive, and substituting the following:

Section 2. When the commissioners court shall have acquired a site for such hospital and shall have awarded contracts for the necessary buildings and improvements thereon, it shall appoint five citizens of the county, of whom at least two shall be practicing physicians, and at least one a woman, who shall constitute a board of managers of the said hospital. The terms of office of each member of said board shall be two years. Appointments of successors shall be for the full term of two years, except that.

KAUFFMAN, Chairman.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Public Health, to whom was referred

House bill No. 366, A bill to be entitled "An Act requiring the State Health Department to disseminate information concerning the cause, nature and extent of communicable disease eand requiring the display throughout the State of a public health exhibit in a railway car; permitting railways to furnish free cars for this purpose and free transportation to persons engaged in the work; permitting the giving and receiving of contributions to the work and making an appropriation for the expenses of the same, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass, being similar to Senate bill No. 240, and that it be not printed.

KAUFFMAN, Chairman.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Judicial Districts, to whom was referred

Senate bill No. 402, A bill to be entitled "An Act to reorganize the Thirteenth Judicial District of Texas, and to create the Seventy-sixth Judicial District of Texas, and fix the time of holding the courts in said districts, and to provide for organizing grand juries at certain terms in said courts, and to provide for the appointment of a judge of the Seventy-sixth Judicial District, and to continue in office the judge and district attorney of the Thirteenth Judicial District and the clerks of the district courts in the several counties of said districts, and to repeal all laws and parts of laws in conflict herewith, and declaring an emergency,"

Have had the same under consideration, and I am instructed to report the same back to the Senate with the recommendation that it do pass.

HUDSPETH, Chairman.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Enrolled Bills have carefully examined and compared

Senate Concurrent Resolution No. 4, Giving old army Enfield rifles to the Confederate camps within the State, and canceling bonds heretofore given by such camps,

And find it correctly enrolled, and have this day, at 11 o'clock a. m., presented same to the Governor for his approval.

GIBSON, Chairman.

Committee Room,
Austin, Texas, March 4, 1913.

Hon. Will H. Mayes, President of the Senate.

Sir: Your Committee on Enrolled Bills have carefully examined and compared

Senate bill No. 22, "An Act amending Chapter 104 of the General Laws passed by the Thirty-second Legislature at its Regular Session by adding at the end of Section 2, Sections 2a and 2b, prescribing additional duties for the State Inspector of Masonry, Public Buildings and Works, and providing for the appointment of assistants by him, defining their duties and fixing their compensation, and declaring an emergency,"

And find it correctly enrolled, and have this day, at 11 o'clock a. m., presented same to the Governor for his approval.

GIBSON, Chairman.

## PETITIONS AND MEMORIALS.

By Senator Lattimore:

Petition signed numerously by farmers of his district endorsing the Katy and Santa Fe consolidation bills and expressing opposition to the river pollution bill.

By Senator Lattimore:

Numerously signed petition by the citizens of Arlington and community urging the early passage of a special road law for Tarrant county.

## THIRTY-NINTH DAY.

Senate Chamber,
Austin, Texas,
Wednesday, March 5 ,1913.

The Senate met pursuant to adjournment, and was called to order by Lieutenant Governor Will H. Mayes.

Roll call, a quorum was present, the following Senators answering to their names:

| | |
|---|---|
| Astin. | Morrow. |
| Bailey. | Murray. |
| Brelsford. | Nugent. |
| Carter. | Paulus. |
| Collins. | Real. |
| Conner. | Taylor. |
| Cowell. | Terrell. |
| Darwin. | Townsend. |
| Gibson. | Vaughan. |
| Greer. | Warren. |
| Johnson. | Watson. |
| Kauffman. | Weinert. |
| Lattimore. | Westbrook. |
| McGregor. | Wiley. |
| McNealus. | Willacy. |

Absent.

Hudspeth.

Prayer by the Chaplain, Rev. H. M. Sears.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Darwin.

(See Appendix for petitions and memorials and standing committee reports.)